SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~598~~ 12

THE WESTERN PACIFIC RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

INDEX

VOLUME 1

	Original	Print
Proceedings before the Interstate Commerce Commission		
Secretary's certificate (omitted in printing)	1	1
Complaint in Docket No. 33679	5	1
Separate answer of The Atchison, Topeka and Santa Fe Railway Company	17	8
Separate answer of Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company	19	9
Answer of Union Pacific Railroad Company and Spokane International Railroad Company	21	10
Answer of Great Northern Railway Company and Pacific Coast R.R. Co.	24	11
Answer of Washington, Idaho, and Montana Railway Company	28	13
Petition of Southern Pacific Company for leave to intervene in opposition to complaint	32	14

RECORD PRESS, PRINTERS, NEW YORK, N. Y., MAY 27, 1965

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961	37	16
Appearances	38	16
Testimony of T. P. Wadsworth—		
direct (by Mr. Treanor)	41	19
Statement of T. P. Wadsworth entered into record	44	21
Statement of D. L. Loftus entered into record—		
direct (by Mr. Treanor)	75	43
Offers in evidence	84	48
Testimony of D. L. Loftus—		
cross (by Mr. Hobbs)	84	49
redirect (by Mr. Burkett)	90	53
Offers in evidence	92	54
Testimony of Grant S. Allen—		
direct (by Mr. Treanor)	93	55
cross (by Mr. Hobbs)	111	67
cross (by Mr. Farrell)	116	72
cross (by Mr. Burkett)	120	74
cross (by Mr. Farrell)	123	77
redirect (by Mr. Treanor)	125	78
recross (by Mr. Farrell)	126	78
Offers in evidence	126	78
Testimony of F. B. Stratton—		
direct (by Mr. Treanor)	127	79
cross (by Mr. Hobbs)	136	85
cross (by Mr. Farrell)	136	86
Testimony of Charles K. Faye—		
direct (by Mr. Treanor)	137	87
cross (by Mr. Hobbs)	144	91
cross (by Mr. Farrell)	147	94
Statement of A. K. Hinckle entered into record—		
direct	158	101
cross (by Mr. Burkett)	161	103

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
Statement of F. W. Fuller entered into record—		
direct (by Mr. Treanor)	165	106
cross (by Mr. Farrell)	168	108
redirect (by Mr. Treanor)	171	110
recross (by Mr. Farrell)	171	110
Statement of M. A. Kasen entered into record—		
direct (by Mr. Treanor)	172	111
cross (by Mr. Farrell)	177	114
Statement of Waldo Wolgamott entered into record—		
direct (by Mr. Treanor)	181	117
cross (by Mr. Farrell)	184	119
redirect (by Mr. Treanor)	185	120
Statement of N. C. Kunzmann entered into record—		
direct (by Mr. Treanor)	186	121
cross (by Mr. Burkett)	188	122
cross (by Mr. Farrell)	189	123
redirect (by Mr. Treanor)	189	123
recross (by Mr. Farrell)	190	124
Statement of John M. Cox entered into record—		
direct (by Mr. Treanor)	190	124
cross (by Mr. Burkett)	193	126
Statement of Robert Stoll entered into record—		
direct (by Mr. Treanor)	194	127
cross (by Mr. Burkett)	196	128
redirect (by Mr. Treanor)	197	129
recross (by Mr. Burkett)	197	129
Statement of C. V. Donaldson entered into record—		
direct (by Mr. Treanor)	199	130
cross (by Mr. Farrell)	203	132
cross (by Mr. Burkett)	209	137

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
Testimony of Clifford Worth—		
direct (by Mr. Treanor)	211	138
cross (by Mr. Burkett)	216	142
cross (by Mr. Farrell)	222	146
Offer in evidence	225	147
Testimony of P. Steele Labagh—		
direct (by Mr. Treanor)	225	147
cross (by Mr. Burkett)	229	150
Statement of Myron Lindgren entered into record—		
direct (by Mr. Treanor)	231	152
cross (by Mr. Burkett)	234	154
Statement of Avery M. Cloninger entered into record—		
direct (by Mr. Treanor)	235	154
cross (by Mr. Burkett)	238	156
Statement of Paul J. Roche entered into record—		
direct (by Mr. Treanor)	240	158
cross (by Mr. Farrell)	243	160
redirect (by Mr. Treanor)	244	160
Statement of Frank L. Sigloh entered into record—		
direct (by Mr. Treanor)	244	161
cross (by Mr. Burkett)	247	163
redirect (by Mr. Treanor)	249	164
recross (by Mr. Farrell)	249	164
Testimony of A. R. Allen—		
direct (by Mr. Treanor)	250	165
cross (by Mr. Hobbs)	254	167
Testimony of T. P. Wadsworth— (resumed)—		
cross (by Mr. Farrell)	257	169
cross (by Mr. Burkett)	304	202
redirect (by Mr. Treanor)	312	209
recross (by Mr. Farrell)	314	210

	Original	Print
roceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
Offers in evidence	316	212
Testimony of T. P. Wadsworth—		
cross (by Mr. Burkett)	316	212
Complainants rest direct case	318	213
Testimony of A. J. Stilling—		
direct (by Mr. Hobbs)	318	213
cross (by Mr. Treanor)	328	219
cross (by Mr. Tjosseni)	333	223
redirect (by Mr. Hobbs)	333	223
Offer in evidence	334	224
Statement of R. B. Hardin entered into record—		
direct (by Mr. Higgins)	334	224
cross (by Mr. Treanor)	351	236
cross (by Mr. Pfrommer)	368	249
Offer in evidence	370	250
Statement of G. E. Roeder entered into record—		
direct (by Mr. Treanor)	372	250
cross (by Mr. Burkett)	374	252
cross (by Mr. Farrell)	376	254
redirect (by Mr. Treanor)	378	255
recross (by Mr. Farrell)	378	255
Testimony of C. W. Evers—		
direct (by Mr. Hobbs)	378	255
cross (by Mr. Treanor)	386	261
Offers in evidence	391	265
Statement of L. S. Davis entered into record—		
direct (by Mr. Farrell)	392	265
cross (by Mr. Treanor)	431	294
redirect (by Mr. Farrell)	446	304
recross (by Mr. Treanor)	447	305
redirect (by Mr. Farrell)	448	306
Offers in evidence	448	306

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
Testimony of Ferdinand Wascoe—		
direct (by Mr. Burkett)	449	307
cross (by Mr. Treanor)	472	323
cross (by Mr. Pfrommer)	475	326
redirect (by Mr. Burkett)	477	327
Offers in evidence	479	328
EXHIBITS:	482	329
No. 1—Map which shows the Pacific Coast areas involved in this case, as well as the locations of the lines and routes of the complainants and defendants	482	329
No. 2—Map which shows the points in California served by complainants, as well as the relationship between such points and those situated on the Southern Pacific, with whom the defendants maintain joint rates via Portland, Oregon	483	330
No. 3—Tables 1-18 of Statistical and other data referred to by Witness Wadsworth's prepared statement	484	331
No. 4—Pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present routing arrangements in effect via the Southern Pacific Company via Portland, Oregon, thence via the Northern Pacific Railway or Union Pacific Railroad Company	495	342
No. 5—Pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present routing arrangements in effect via The Western Pacific Railroad Company via Bieber, Cal. between points in California and points in Oregon, Washington and Northern Idaho	501	348

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
EXHIBITS—Continued		
No. 6—Map showing "Stations designated in red are junction points between Union Pacific and Great Northern Railway in Oregon, Washington and Idaho, affording interchange of carload freight without transfer of lading"	508	355
No. 7—Map showing "Stations designated in red are junction points between Northern Pacific Railway and Great Northern Railway in Oregon, Washington and Idaho, affording interchange of carload freight without transfer of lading"	509	356
No. 8—Page 38 of Southern Pacific Company Freight Tariff 230-K, ICC 4960, containing absorption of Western Pacific's switching charge at Sacramento on Canned Goods moving from Sacramento via SP to points on NP or UP in Oregon, Washington or Idaho	510	357
No. 9—Statement showing "Representative Commodities on which present combination rates applicable via Bieber and Portland thence Northern Pacific Railway or Union Pacific Railroad Company are compared with joint through rates in effect via defendant's routes with the Southern Pacific Company via Portland"	512	359
VOLUME 2		
No. 10—Statement showing "Originations and terminations of Carload freight traffic via Bieber moving west of transcontinental for the years 1955-1959"	556	403

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
EXHIBITS—Continued		
No. 11—Statement showing "Cars via Santa Fe Via Bieber or Portland (West of Transcontinental Territory) for the years 1955-1959"	557	404
No. 12—Statement showing "Traffic via Bieber compared with total revenue freight traffic handled by The Western Pacific Railroad Company for the years 1955-1959"	558	405
No. 13—Statement showing "West of Transcontinental Traffic via Bieber compared with other West of Transcontinental Traffic moving via The Western Pacific Railroad Company and with the total revenue traffic handled by that Railroad"	558a	406
No. 14—Pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present rates on Cast Iron Pipe from Decoto, California on the Western Pacific Railroad to points in Oregon, Washington and Northern Idaho, via Western Pacific to Bieber, Cal.; Great Northern Railway to Portland, Oregon, thence via Northern Pacific Railway Company or Union Pacific Railroad Company	559	407
No. 15—Pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present rates on Automobiles from Oakland and Decoto, Cal. to points in Oregon, Washington and Northern Idaho, via Western Pacific to Bieber, Cal., Great Northern Railway to Portland, Oregon, thence Northern Pacific Railway Company or Union Pacific Railroad Company	569	417

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
EXHIBITS—Continued		
No. 16—Pacific Southcoast Freight Bureau Tariff No. 297-D (and Supplements 3 and 4), ICC. No. 1678, containing present rates on Automobiles from points in California on the Western Pacific Railroad Company to points on the Northern Pacific Railway and Union Pacific Railroad Company via Western Pacific Railroad Company to Bieber, California, Great Northern Railway to Portland, Oregon, thence Northern Pacific Railway or Union Pacific Railroad Company	578	426
No. 17—Statement on "Economic Growth"	595	456
No. 18—Statement on "Production"	597	458
No. 19—Statement on "The Western Pacific Transportation Plant"	598	459
No. 20—Map of The Western Pacific Railroad showing the interchange points between the Western Pacific and the Sacramento Northern, the Tidewater Southern, and other railroads	599	460
No. 21—Map of U.P.R.R.Co. showing main railroad routes and connections—Portland, Oregon, Aug. 4, 1960	600	461
No. 22—Statement showing "Gross Ton Miles Trailing East, West & Total"	601	462
No. 23—Statement showing "Northbound—Southern Pacific Schedules"	602	463
No. 24—Statement showing "Southbound—Southern Pacific Schedules"	603	464
No. 25—Statement showing "Comparison between Lowest "Through" rate on Fibreboard boxes, KD Flat from Stockton and Antioch, Calif. to Selected Stations in Washington and Lowest "Combination" Rate Applicable via the Bieber Route"	604	465

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
EXHIBITS—Continued		
No. 26—Map showing the Union Pacific line in California, Nevada, Utah, Idaho, Oregon and Washington indicated in red, the principal lines of the Southern Pacific in Oregon and California indicated in blue and the joint line of the Santa Fe, Western Pacific, Great Northern, between California and Portland indicated in green	605	466
No. 27—Map of Portland, Ore. and Vancouver, Wash. and Vicinity showing principal railroad trackage therein	606	467
No. 28—Statement showing "Northbound Freight Train Schedules Southern Pacific—Union Pacific and Bieber Route and Elapsed Times"	607	468
No. 29—Statement showing "Southbound Freight Train Schedules—Southern Pacific—Union Pacific and Bieber Route and Elapsed Times"	609	470
No. 30—Map showing Lines of Southern Pacific indicated in blue, Inside Gateway to Portland, Ore. indicated in green, Lines of Northern Pacific Railway Co. and connections indicated in red, and Lines of Oregon Trunk and Spokane, Portland & Seattle Railways indicated in yellow	610	471
No. 31—Enlarged Map showing Lines of Southern Pacific indicated in blue, Inside Gateway to Portland, Ore. indicated in green, Lines of Northern Pacific Railway Co. and connections indicated in red and Lines of Oregon Trunk and Spokane, Portland & Seattle Railways in yellow	611	472

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of hearing, May 8, 9, and 10, 1961—Continued		
EXHIBITS—Continued		
No. 32—Exhibit showing comparison of Railroad Distance via Existing joint rate routes with route sought in this proceeding and also routes via Oregon Trunk-Spokane, Portland and Seattle Railway Companies between Representative Points on the Northern Pacific Railway Company and San Francisco and Los Angeles, California	612	473
No. 33—Statement showing Transportation Conditions of Southern Pacific Routes Compared with Western Pacific Route via Bieber, California between Portland, Oregon and Stockton, California, San Francisco, California, and Los Angeles, California	622	483
No. 34—Statement showing "Freight Train Schedules—Southern Pacific Routes Compared with Western Pacific Bieber Route"	640	501
No. 35—Statement showing "Gross Ton Miles Trailing East, West and Total—Gerber—Dunsmuir"	641	502
Brief of complainants to the Hearing Examiner, dated and served July 6, 1961 (excerpts)	642	503
Complainants' reply to exceptions of Northern Pacific Railway Company, Union Pacific Railroad Company and Southern Pacific Company (excerpts)	648	505
Transcript of hearing December 14, 1961 (excerpts)	654	508
Statement by Commissioner Freas and colloquy with Mr. Treanor	655	508
Complainants' petition for reconsideration of the report and order of Division 2, dated and served August 27, 1962 (excerpts)	659	510

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Complainants' petition for further hearing for purpose of introducing newly developed evidence, dated December 28, 1962	666	512
Order of Commission denying petition for reconsideration of report and order of Division 2, entered January 18, 1963	674	516
Complainants' petition for waiver of the provisions of Rule 1.101(e) of the Commission's general rules of practice, January 19, 1963	676	517
Petition of The Western Pacific Railroad Company pursuant to Rule 1.101(a) (4) general rules of practice seeking a finding that an issue of general transportation importance is involved, filed January 30, 1963	682	519
Reply of defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company to complainants' petition for waiver of Rule 1.101(e) and petition for further hearing	687	522
Reply of defendant Union Pacific Railroad Company to complainant's petition for waiver of Rule 1.101(e) and petition for further hearing	697	527
Reply of intervener Southern Pacific Company to complainants' petition for waiver of Rule 1.101(e) and petition for further hearing	710	536
Order of the Commission designating this proceeding as one involving an issue of general transportation importance, entered February 14, 1963	717	541
Complainants' petition to the full Commission for reconsideration of the report and order of Division 2 and complainants' request for oral argument before the full Commission (excerpts)	719	542
Petition of United States for leave to intervene for the purpose of petitioning the full Commission for reconsideration of the report and order of Division 2 and to be heard on oral argument	735	550

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Petition of United States to full Commission for reconsideration of report and order of Division 2 and request of United States for oral argument before full Commission	740	553
Reply of intervener Southern Pacific Company to petition of Department of Justice for leave to intervene for the purpose of petitioning the full Commission for reconsideration of the report and order of Division 2 and to be heard on oral argument dated and served August 1, 1963	768	573
Petition of United States to Full Commission (1) to vacate its order served July 30, 1963; (2) to reopen the proceedings for the purpose of considering petitions of the United States filed July 26, 1963 and such responses thereto as may be filed by the parties; (3) to hear oral argument if then warranted; and (4) to issue a decision stating findings and conclusions and the reasons or basis therefor upon all material issues as well as an order granting or denying the relief sought	774	577
Reply of defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company to petition of the United States for leave to intervene	783	583
Order of Commission denying petitions of United States entered August 9, 1963	794	589
Motion of Union Pacific Railroad Company, defendant, for The Interstate Commerce Commission to deny or reject the petition of The United States for leave to intervene served August 9, 1963	796	590
Reply of defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company to petition of the United States to reopen proceedings	802	592

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Reply of Union Pacific Railroad Company, Defendant, to petition of The United States to reopen proceedings served August 16, 1963	821	604
Reply of intervener Southern Pacific Company to petition of United States to reopen proceeding served August 21, 1963	830	610
Letter from Secretary, Interstate Commerce Commission to Mr. John N. Dougherty, Department of Justice, dated September 10, 1963	835	613
Record from the United States District Court for the Northern District of California, Southern Division	836	614
Complaint	836	614
Exhibit "A"—Report and Order of the Commission, Division 2, Commissioner Freas, decided July 26, 1962 and served August 2, 1962	846	623
Exhibit "B"—Notice of denial of hearing by the full Commission, dated July 12, 1963 and service date of July 30, 1963	871	646
Exhibit "C"—Report and Order recommended by Hearing Examiner, John F. Wright, dated July 31, 1961 and served August 10, 1961	872	648
Order granting motion of Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company to intervene as defendants, November 4, 1963	878	656
Answer of intervening defendants Northern Pacific Railway Company, Camas Prairie Railroad Company, and Walla Walla Valley Railway Company filed November 4, 1963	880	657
Order granting motion of Union Pacific Railroad Company to intervene as defendant, November 26, 1963	884	660

	Original	Print
Record from the United States District Court for the Northern District of California, Southern Division—Continued		
Answer of intervening defendant Union Pacific Railroad Company filed November 26, 1963	886	661
Order granting motion of Interstate Commerce Commission to intervene as defendant, December 16, 1963	890	664
Answer of intervening defendant, the Interstate Commerce Commission filed December 16, 1963	891	665
Answer of the United States of America filed December 16, 1963	896	669
Order granting motion of the Southern Pacific Company to intervene as a defendant, dated December 16, 1963	898	669
Answer of intervening defendant Southern Pacific Company filed December 16, 1963	900	670
Order allowing intervention of The Atchison, Topeka, and Santa Fe Railway, dated January 13, 1964	905	674
Answer of intervening defendant, The Atchison, Topeka and Santa Fe Railway Company filed January 13, 1964	907	675
Transcript of hearing on motion to enjoin, set aside, suspend and annul order of Interstate Commerce Commission	909	676
Appearances	909	677
Argument by Mr. Treanor on behalf of plaintiff	910	677
Argument by Mr. Ginnane on behalf of Interstate Commerce Commission	938	693
Argument by Mr. Higgins on behalf of Union Pacific, intervening defendant	960	707
Argument by Mr. Farrell on behalf of Northern Pacific, the Camas Prairie and Walla Walla Railroads	975	715
Rebuttal argument by Mr. Treanor	983	720
Opinion and judgment, Zirpoli, J.—Order denying petition, June 19, 1964	998	730

	Original	Print
Record from the United States District Court for the Northern District of California, Southern Division—Continued		
Notice of appeal to the Supreme Court of the United States	1003	735
Designation of additional portions of the record, etc.	1011	740
Clerk's certificate (omitted in printing)	1015	741
Order noting probable jurisdiction	1016	742

Originations and terminations of Carload freight traffic via Bieber moving west of transcontinental.

COLUMNS / LINES	1 Year	2 From or to Points on	3 Originations Cars	4 Originations Percents of Annual Total	5 Terminations Cars	6 Terminations Percents of Annual Total	7 Total Cars	8 Total Percents of Annual Total
1	1955	WP	10,505	30.8	7,674	27.9	18,179	29.8
2		SN-TS	862	2.5	714	2.6	1,576	2.6
3		Complainants'						
4		Total	11,367	33.4	8,388	30.5	19,755	32.1
5		ATSF	16,501	48.4	17,576	64.0	34,077	55.4
6		Other connections*	6,192	18.2	1,497	5.5	7,689	12.5
7		Total	34,060	100.0	27,461	100.0	61,521	100.0
8	1956	WP	10,658	33.1	6,284	24.4	16,942	29.2
9		SN-TS	811	2.5	636	2.5	1,447	2.5
10		Complainants'						
11		Total	11,469	35.6	6,920	26.8	18,389	31.7
12		ATSF	14,623	45.4	17,380	67.4	32,003	55.2
13		Other connections*	6,099	18.9	1,477	5.7	7,576	13.1
14		Total	32,191	99.9	25,777	99.9	57,968	100.0
15	1957	WP	11,088	38.0	5,867	24.7	16,955	32.0
16		SN-TS	774	2.7	705	3.0	1,479	2.8
17		Complainants'						
18		Total	11,862	40.7	6,572	27.6	18,434	34.8
19		ATSF	12,979	44.5	15,725	66.1	28,704	54.2
20		Other connections*	4,330	14.8	1,484	6.2	5,814	11.0
21		Total	29,171	100.0	23,781	99.9	52,952	100.0
22	1958	WP	7,824	32.9	7,681	28.7	15,505	30.6
23		SN-TS	491	2.1	644	2.4	1,135	2.2
24		Complainants'						
25		Total	8,315	34.9	8,325	31.1	16,640	32.9
26		ATSF	11,625	48.8	17,030	63.6	28,655	56.6
27		Other connections*	3,865	16.2	1,438	5.4	5,303	10.5
28		Total	23,805	99.9	26,793	100.1	50,598	100.0
29	1959	WP	8,049	33.8	7,753	26.0	15,802	29.4
30		SN-TS	590	2.5	899	3.0	1,489	2.8
31		Complainants'						
32		Total	8,639	36.2	8,652	29.0	17,291	32.2
33		ATSF	11,286	47.4	20,185	67.4	31,471	58.5
34		Other connections*	3,907	16.4	1,091	3.6	4,998	9.3
35		Total	23,832	100.0	29,928	99.9	53,760	100.0

*Of Western Pacific Railroad Company.
Source: Statistical records of The Western Pacific Railroad Company.

CARS VIA SANTA FE VIA BIEBER OR PORTLAND
(WEST OF Transcontinental Territory)

COLUMNS/1:	2	3	4	5	6	7	8	9	10	11	12	13
L:	NORTHBOUND				SOUTHBOUND				TOTAL			
I: YEAR	Via Bieber	Via ø Portland SP	* Total	Per Cent: Via Bieber	Via Bieber	Via ø Portland SP	* Total	Per Cent: Via Bieber	Via Bieber	Via ø Portland SP	* Total	Per Cent Via Bieber
1: 1955	16,501	2,961	19,462	84.8	17,576	4,123	21,699	81.0	34,077	7,084	41,161	82.8
2: 1956	14,623	3,926	18,549	78.8	17,380	5,124	22,504	77.2	32,003	9,050	41,053	78.0
3: 1957	12,979	2,820	15,799	82.2	15,725	3,656	19,381	81.1	28,704	6,476	35,180	81.6
4: 1958	11,625	2,568	14,193	81.9	17,030	2,911	19,941	85.4	28,655	5,479	34,134	83.9
5: 1959	11,286	2,783	14,069	80.2	20,185	5,260	25,445	79.3	31,471	8,043	39,514	79.7
6: Per												
7:Cents	68.40	93.31	72.29	----	114.84	[illegible]7.58	117.26	----	92.35	113.54	96.00	----
8:1959 of:												
9:1955												
10: Total	67,014	15,058	82,072	81.7	87,896	21,074	108,970	80.7	154,910	36,132	191,062	81.1
11:Average	13,403	3,012	16,414	81.7	17,579	4,215	21,794	80.7	30,982	7,226	38,208	81.1

Sources: Western Pacific Railroad Company's Accounting Department Records.
Santa Fe Railway's Traffic Department's Records.

Explanation of Reference Marks:

*Between California and Oregon-Washington.
øDifference between "Total" and "Via Bieber".

EXHIBIT No. 12

Traffic via Bieber compared with total revenue freight traffic handled by The Western Pacific Railroad Company.

Column:	1	2	3	4	5	6	7	8	9	10	11
Line:						PERCENTS					
No.	Year		Cars	Tons	Western Pacific's Revenues	Of Totals Via Bieber		Western Pacific's Revenues	Of Total Revenue Freight Handled		Western Pacific's Revenues
						Cars	Tons		Cars	Tons	
1	1955	West of T.C.	61.891	1.831.708	8.290.383	86.3	88.6	82.3	28.1	24.7	16.4
2		Transcontinental	9.774	236.789	1.783.726	13.7	11.4	17.7	3.8	3.2	3.5
3		Total via Bieber	71.255	2.068.493	10.074.109	100.0	100.0	100.0	22.8	27.9	19.9
4		Total revenue									
5		freight handled	255.507	7.420.080	50.698.311	---	---	---	100.0	100.0	100.0
6	1956	West of T.C.	52.968	1.758.066	7.896.777	88.7	87.4	80.5	22.8	23.0	15.5
7		Transcontinental	10.838	253.836	1.914.894	15.3	12.6	19.5	4.1	3.3	3.8
8		Total via Bieber	68.406	2.011.902	9.811.671	100.0	100.0	100.0	26.9	26.3	19.3
9		Total revenue									
10		freight handled	254.682	7.687.858	50.917.498	---	---	---	100.0	100.0	100.0
11	1957	West of T.C.	52.952	1.578.434	7.525.697	82.8	85.1	78.2	22.0	21.4	14.6
12		Transcontinental	10.973	275.922	2.111.909	17.2	14.9	21.8	4.6	3.7	4.1
13		Total via Bieber	63.925	1.854.356	9.687.606	100.0	100.0	100.0	26.6	25.1	18.2
14		Total revenue									
15		freight handled	280.382	7.388.997	51.829.819	---	---	---	100.0	100.0	100.0
16	1958	West of T.C.	50.598	1.512.672	7.606.500	80.3	83.3	75.3	23.0	21.9	15.0
17		Transcontinental	12.431	308.442	2.492.985	19.7	16.9	24.7	5.7	4.5	4.9
18		Total via Bieber	63.029	1.821.121	10.099.485	100.0	100.0	100.0	28.7	26.4	19.9
19		Total revenue									
20		freight handled	219.850	6.910.926	50.679.756	---	---	---	100.0	100.0	100.0
21	1959	West of T.C.	51.760	1.663.787	7.569.880	80.3	83.7	75.1	23.5	23.5	15.0
22		Transcontinental	13.227	323.276	2.512.478	19.7	16.3	24.9	5.7	4.6	4.9
23		Total via Bieber	66.987	1.987.063	10.082.358	100.0	100.0	100.0	29.2	28.1	19.9
24		Total revenue									
25		freight handled	229.133	7.069.333	50.539.698	---	---	---	100.0	100.0	100.0
26	Total	West of T.C.	276.799	8.344.670	38.939.437	83.0	85.6	78.3	23.1	22.9	15.3
27	(1955-	Transcontinental	56.803	1.398.265	10.815.952	17.0	14.4	21.7	4.7	3.8	4.2
28	1959)	Total via Bieber	333.602	9.742.935	49.755.389	100.0	100.0	100.0	27.8	26.7	19.5
29		Total revenue									
30		freight handled	1.199.554	36.437.190	254.654.672	---	---	---	100.0	100.0	100.0
31	Average	West of T.C.	55.360	1.668.934	7.787.887	83.0	85.6	78.3	23.1	22.9	15.3
32	(1955-	Transcontinental	11.361	279.653	2.163.190	17.0	14.4	21.7	4.7	3.8	4.2
33	1959)	Total via Bieber	66.721	1.948.587	9.951.077	100.0	100.0	100.0	27.8	26.7	19.5
34		Total revenue									
35		freight handled	239.911	7.287.438	50.930.934	---	---	---	100.0	100.0	100.0

that Railroad.

Witness

COLUMNS /	1	2	3	4	5	6	7	8	9	10	11
L: I: N: E:	Traffic Movements	Year	Cars	Tons	Western Pacific's Revenues	PERCENTS OF Total West of Transcontinental W.P's. Cars	Tons	Revenues	Total revenue freight handled by W.P.R.R.Co. W.P's. Cars	Tons	Revenues
1	West of	1955	61,521	1,831,705	[illegible]	46.4	39.9	41.7	23.1	23.7	15.5
2	Transcontinental										
3	Traffic Via	1956	57,948	1,758,066	7,836,772	45.5	37.4	40.2	22.8	23.0	15.5
4	Bieber										
5		1957	52,992	1,578,535	7,575,697	44.1	35.0	38.7	22.0	21.4	15.6
6											
7		1958	50,598	1,512,679	7,606,500	46.2	36.7	38.9	23.0	21.9	15.0
8											
9		1959	53,760	1,663,787	7,569,860	47.5	40.0	41.4	23.5	23.5	15.0
10											
11		Total 1955-1959	276,799	8,344,670	38,939,457	46.0	37.8	40.3	23.1	22.9	15.4
12											
13		Average 1955-1959	55,360	1,668,934	7,787,887	46.0	37.8	40.3	23.1	22.9	15.4
14											
15	Other West of	1955	69,835	2,761,866	11,583,360	53.6	60.1	58.3	27.5	37.2	22.4
16	Transcontinental	1956	69,347	2,744,124	11,477,960	54.5	62.6	59.5	27.2	38.5	22.6
17	Traffic	1957	67,849	2,932,779	11,886,784	55.9	65.0	61.5	27.9	39.7	23.1
18		1958	58,920	2,604,772	11,925,212	53.8	63.3	61.1	26.8	37.7	23.5
19		1959	59,344	2,853,061	10,673,666	52.5	62.2	58.6	25.9	35.5	21.1
20		Total 1955-1959	325,297	13,736,577	57,485,923	54.0	62.1	59.7	27.0	37.7	22.6
21		Average 1955-1959	65,059	2,747,315	11,497,185	54.0	62.1	59.7	27.0	37.7	22.6
22	Total West of	1955	131,356	4,593,570	19,873,923	100.0	100.0	100.0	51.6	61.9	38.2
23	Transcontinental	1956	127,315	4,702,190	19,314,737	100.0	100.0	100.0	50.0	61.5	38.1
24	Traffic	1957	120,001	4,511,328	19,462,481	100.0	100.0	100.0	49.9	61.1	37.7
25		1958	109,518	4,117,451	19,530,712	100.0	100.0	100.0	49.8	59.6	38.5
26		1959	113,106	4,516,848	18,243,526	100.0	100.0	100.0	49.4	58.8	36.1
27		Total 1955-1959	601,296	22,441,387	96,425,360	100.0	100.0	100.0	50.1	60.6	37.9
28		Average 1955-1959	120,259	4,488,279	19,285,072	100.0	100.0	100.0	50.1	60.6	37.9
29	Total Revenue	1955	255,307	7,420,080	52,008,531	---	---	---	100.0	100.0	100.0
30	freight handled	1956	249,682	7,647,838	50,917,998	---	---	---	100.0	100.0	100.0
31	by The Western	1957	240,382	7,366,597	51,829,819	---	---	---	100.0	100.0	100.0
32	Pacific Railroad	1958	219,850	6,910,926	50,679,786	---	---	---	100.0	100.0	100.0
33	Company	1959	229,135	7,060,333	50,539,698	---	---	---	100.0	100.0	100.0
34		Total 1955-1959	1,393,544	36,337,180	256,675,832	---	---	---	100.0	100.0	100.0
35		Average 1955-1959	239,910	7,287,436	50,970,956	---	---	---	100.0	100.0	100.0

W.P's. .... Western Pacific's.
W.P.R.R.Co. ... Western Pacific Railroad Company.
Source: Statistical records of The Western Pacific Railroad Company.

[fol. 559]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 14

Copies of pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present rates on Cast Iron Pipe from Decoto, California on the Western Pacific Railroad to points in Oregon, Washington and Northern Idaho, via Western Pacific to Bieber, Cal., Great Northern Railway to Portland, Oregon, thence via Northern Pacific Railway Company or Union Pacific Railroad Company.

NOT subject to Increases referred to in Items X-178, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 190 (X-223 series).

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 7135-E

APPLIES ONLY IN CONNECTION WITH RATES MAKING SPECIFIC REFERENCE TO THIS ITEM
Column J rates apply on:
Iron or Steel Articles, viz.:
Pipe, cast
Fittings, pipe, cast
Column K rates apply on:
Iron or Steel, as described in WC under heading "Iron or Steel."
Iron or Steel Pipe or Tubing or Iron or Steel Pipe or Tubing Fittings.

Item 7139-U

Iron or Steel Articles, as described in Items 7140 to 7155.
For list of articles taking Column A, B, C, D, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

TO (Except as Noted)	Col.	FROM, Except as Noted								
		Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)			Group 17D (Santa Barbara)		
		MINIMUM WEIGHT (LBS.)								
(Pro. 3021)		⑧	⑧	⑧	⑧	⑧	⑧	⑧	⑧	⑧
Group 25 (Klamath Falls).....	A.....	.....	⑪⑥71	.....	⑪⑥60 s⑦72	44⑪⑥24 ㉕100	.....	⑪⑥78 s⑥84	130	.....
	B.....	⑥㉕99	⑥⑪㉕99	.....	.....	.....	.....	.....	.....	.....
	C.....	.....	⑪⑥71	.....	⑪⑥60 s⑦72	44⑪⑥24 ㉕100	.....	⑪⑥78 s⑥84	130	.....
	D.....	.....	⑪⑥71	85	⑪⑥60	44⑪⑥24 ㉕100	.....	⑪⑥78	.....	.....
	E, H....	.....	⑪⑥71	.....	⑪⑥60 s⑦72	44⑪⑥24 ㉕100	.....	⑪⑥78 s⑥84	130	.....
	F.....	.....	⑪⑥71	.....	⑪⑥60 s⑦72	44⑪⑥24 ㉕100	.....	⑪⑥78 s⑥84	.....	.....
	G.....	.....	⑪⑥71	.....	⑪⑥60 s⑦72	44⑪⑥24 ㉕100	.....	⑪⑥78 s⑥84	.....	.....
	J.....	.....	⑪⑥71	⑪㉕64	⑪⑥60	44⑪⑥24 ㉕100 152	㉕㉕84	⑪⑥78	.....	92

⑥Does not apply from points on ATSF in connection with SP.
⑦Does not apply from Group 15 points on ATSF in connection with SP.
⑧Does not apply on shipments consisting exclusively of articles for which rates are provided in Column A.
⑪Does not apply to Group 15 points on ATSF in connection with SP.
㉔Does not apply to points on ATSF in connection with SP.
㉕Does not apply from or to Group 15 points on ATSF in connection with SP.
㊹Applies only on shipments which include Plates or Sheets (exclusive of planished or russia), as described in Column B, Item 7140, in mixed carloads.
㊺Does not apply on shipments which include Plates or Sheets (exclusive of planished or russia), as described in Column B, Item 7140.
㊻Does not apply from or to points on ATSF in connection with SP.
㊼Rates also apply from sideline points to headline points.
㊽Min. wt. 30,000 lbs.
㊾Min. wt. 40,000 lbs.
㊿Min. wt. 60,000 lbs.
(152)Min. wt. 80,000 lbs.
s—Applies southbound only.
(X)Not subject to Increases referred to in Item X-212.
△△Reduction southbound.
For Explanation of other Reference Marks, see Item 10.

NOT subject to Increases referred to in Items X-178, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 120 (X-212 series).

20th Revised Page.....333A
Cancels 19th Revised Page.....333A

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1262
GTO.....143

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS., except as shown below
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7168-L
For list of articles taking Columns A, B, C, D, E, F, G, H, J or K rates, see Items 7140, 7145, 7150 and 7156.

TO Except as Noted	Col.	FROM, Except as Noted: Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)				Group 17D (Santa Barbara)				Group 18 (San Diego)				rs(2)2565 San Diego, Cal.		Group 19 (Los Angeles) 641 Kaiser, Cal. 2210 gTorrance, Cal. 2671 dKaiser Cal.	
		MINIMUM WEIGHT (LBS.)																		
		(2)	(2)	(2)	k(2)	k(2)	(2)	(2)	k(2)	k(2)	(2)	(2)	k(2)	(1)(2)	k(2)	(1)(2)	(1)(2)		(2)	c(2)
Group 26 (Portland) Group 27 (Portland) 18529 Rockwood ....Ore.	A....	.....	&bk 100	.....	&b78	...	&b k120	w(2) (T)1620	&b92	...	151	...	121	133	...	101	c133	c101	(2)ckpu 120	(2)epku92 ck105 wou(2) (2)(T)1620
	B....	.....	b112	.....	.....	...	.....	.....	.....	...	...	...	.....	.....	...	.....	.....	.....	.....	.....
	C....	.....	k100	(T)no78	78	...	k120	(T)nc92	92	...	...	...	.....	.....	...	.....	.....	.....	(2)ckpu 120 c134	(2)epku92 ck105 (1)(2) epun(2)92
	D...	.....	....	92	.....	...	.....	.....	.....	...	...	...	.....	.....	...	.....	.....	.....	.....	.....
	E....	.....	&ba k100	.....	&bh 78	...	&b ak120	.....	&b92	...	...	...	.....	.....	...	.....	.....	.....	(2)ckpu 120	(2)epku92 c105
	F,G,H...	.....	k100	.....	78	...	k120	.....	92	...	...	...	.....	.....	...	.....	.....	.....	(2)ckpu 120	(2)epku92
	J....	.....	....	km72	.....	...	152	k92	.....	...	...	k92	.....	.....	...	.....	.....	.....	(2)epu152	(2)epku(2) 92
	K...	k153	....	.....	....	185	.....	.....	....	185	...	...	.....	.....	...	.....	.....	.....	(2)eku(2) 185	.....
Group 28 (Seattle) (JT-7557)	A....	.....	k110	.....	87	...	k130	w(2) (T)1800	101	...	...	...	.....	143	...	110	143	110	(2)kpu130	(2)pku101 k115 wu(2)(2) (2)1800
	C....	.....	k110	(T)n87	87	...	k130	(T)n101	101	...	...	...	.....	.....	...	.....	.....	.....	(2)kpu130 144	(2)pku101 k115 (1)(2)npu (2)101
	E....	.....	ak 110	.....	87	...	k130	.....	101	...	...	...	.....	.....	...	.....	.....	.....	(2)kpu130	(2)pku101 115
	F,G,H...	.....	k110	.....	87	...	k130	.....	101	...	...	...	.....	.....	...	.....	.....	.....	(2)kpu130	(2)pku101
	J....	.....	....	km72	.....	...	152	k92	.....	...	...	k 102	.....	.....	101	.....	.....	.....	(2)pu153	(2)pku(2) 92
	K...	k170	....	.....	....	185	.....	.....	....	185	...	...	.....	.....	...	.....	.....	.....	(2)ku(2) 185	.....

(2)Expires as per Item 20.
For Explanation of Notes and other Reference Marks, see Items 10 and 7158.7.

ISSUED FEBRUARY 13, 1961

EFFECTIVE MARCH 13, 1961

C—2400—Anthy. LD-9475.

Issued by W. O. GENTLE, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

Correction 17904

333A

[fol. 561]

409

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 7188.7-D

EXPLANATION OF REFERENCE MARKS

(Applies only in connection with rates making specific reference hereto)

a—Does not apply on Column E articles for which rates are named in Item 7205.
b—Does not apply from or to Eugene, Ore. (Indices 14940 or 16115); for rates, see Items 7165 and 7170.
c—Applies only in connection with rates from or to Group 26 points.
d—Via SP, Colton, Cal., UP, via Salt Lake City, Utah, and Huntington, Ore.
e—Except as noted.
g—Via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP, via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
h—Does not apply on shipments consisting exclusively of articles for which rates are provided in Column F.
k—Rates also apply from sideline points to headline points.
m—Will also apply from Index 7430 Decoto, Cal., to points on NP or UP, via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.
n—Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
o—Applies only to Group 26 points on NP, SP, SP&S and UP; Group 27 points on GN and SP&S and 17830 Wishram, Wash.
p—Fabrication in transit privileges authorized by Item 1130 series will not apply.
r—Applies via routes in Section 6 in connection with SP to El Centro, Cal., thence SDAE Division, Cal., TyT, San Ysidro, Cal., SDAE.
s—Not subject to transit privileges authorized by Item 1130 at points in California, east of Colton, Cal.
u—Does not apply from or to Group 19 points on ATSF.
v—Applies only from 641 Kaiser, Cal., or d5971 Kaiser, Cal.
w—Applies only on Skelp, in coils and not over .25 of one per cent carbon (subject to Notes 1 and 2).
(2)Min. wt. 30,000 lbs.
(4)Min. wt. 40,000 lbs., except as noted.
(6)Min. wt. 60,000 lbs., except as noted.
(8)Min. wt. 80,000 lbs., except as noted.
(10)Min. wt. 100,000 lbs.
(D)Applies Southbound only.
(T)Rates in cents per 2,000 lbs.
Note 1—The bill of lading and shipping order to include the clause "Not over .25 of one per cent carbon."
Note 2—Applies only on shipments in open top cars not protected by tarpaulin or other protective coverings.

For Explanation of (other) Reference Marks, see Item 10.

[fol. 562]

410

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 130 (X-223 series).

20th Revised Page.....333B
Cancels 19th Revised Page.....333B

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
CTC.....142

SECTION 6—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7189-T
For list of articles taking Column A, B, C, E, F, G, H, J or K rates, see Items 7140 to 7155.

TO (Except as Noted) (CJT-1270)	Column	FROM (Except as Noted) Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)		Group 17D (Santa Barbara)	Group 19 (Los Angeles) (12)641 Kaiser.....Cal. (14)2010 Torrance..... " (15)5971 Kaiser..... "		
		MINIMUM WEIGHT (LBS.) (40)	(30)	(30)	(40)	(30)	(30)	(30)	(30)	(30)
⊕Group 29A (Everett)....	A,E,F,G,H.....	113	.....	(13)92	134	.....	(14)105	.....	&gm(m)134	.....	&gm(m)(14)105
	C.....	113	(5)(17)92	δ(13)92	134	(5)(17)105	δ(14)105	.....	&gm(m)134	&gm(5)(17)(m)105	&gm δ(m)(14)105
	J.....	.....	(1)84 (13)94	.....	.....	105 (14)115	.....	(14)115	.....	&gm(m)105 &gm(m)(14)115	.....
⊕Group 29B (Bellingham), except 11025 Anacortes, Wash.....	A,E,F,G,H.....	119	.....	(13)97	139	.....	(14)111	.....	&gm(m)139	.....	&gm(m)(14)111
	C.....	119	(5)(17)97	δ(13)97	139	(5)(17)111	δ(14)111	.....	&gm(m)139	&gm(5)(17)(m)111	&gm δ(m)(14)111
	J.....	.....	(1)(13)94	.....	.....	(14)115	.....	(14)115	.....	&gm(m)(14)115	.....
Group 30 (Ellensburg)... Group 31 (Yakima)... Group 32 (Sunnyside). Group 33 (Kennewick) Group 34 (Walla Walla)..... Group 35 (Dayton)... Group 36 (Spokane)...	A,E,F,G.	113	.....	(13)92	134	.....	(14)105	.....	134	.....	(14)105
	δB.....	(7)(13)149	.....	.....	.....	.....	.....	.....	.....	.....	.....
	C.....	113	(5)(17)92	(13)92	134	(5)(17)105	(14)105	.....	134	(5)(17)105	(14)105
	H.....	113	.....	(13)92	134	.....	(14)105	.....	134	.....	(14)105
	J.....	.....	(13)84	.....	.....	105	.....	.....	.....	105	.....
	K.....	(20)203	.....	.....	(20)220	.....	.....	.....	(20)220	.....	.....

(1)Will also apply from Index 7430 Decoto, Cal., to points on NP or UP via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.

(7)To or from points on NP, rates apply only via routes provided in Section 6 in connection with SP to Portland (Park St.) or East Portland, Ore., on SP, thence SP&S, Pasco, Wash., NP, or vice versa.

(12)Applies via ATSF, Barstow, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.

(13)Applies via SP, Colton, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.

(14)Applies via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.

(25)Rates also apply from sideline points to headline points.

(a) Rates to points on NP or UP in Groups 31, 32 and 33 will also apply from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.

(b) Rates to Group 34 points, viz.:—13465 Walla Walla and 13487 Walair, Wash., on NP and (m)19310 Walla Walla, Wash., on UP apply also from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.

(14) (c) Rates to Group 35 and 36 points on NP and UP apply also from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP or (m)UP.

(d) Rates to Group 36 points on CamP and WI&M apply also from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence via following routes:
NP (via Pasco, Wash.), Riparia, Wash., CamP UP, (m)Riparia, Wash., CamP NP, Palouse, Wash., WI&M

(17)Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of Paragraphs 2 and 3 of Item 1017.

(18)Rates apply from sideline points to headline points only.

(m)Applies only via Wallula, Wash.

(20)Min. wt. 30,000 lbs.

(30)Min. wt. 40,000 lbs., except as noted.

(40)Min. wt. 80,000 lbs.

(X)Expires as per Item 20.

δ Does not apply on articles described by (17) reference mark, during period rate flagged with "(X)" and (17) references are in effect.

g—Does not apply from or to 641 Kaiser, 2010 Torrance or 5971 Kaiser, Cal.

m—Applies only via Routes C-110 or U-40 provided in Section 7 and does not apply from or to points on ATSF.

⊕For rates in effect, prior to effective date hereof, see 26th Revised Page 334B and 27th Revised Page 334C.

For Explanation of other Reference Marks, see Item 10.

ISSUED JANUARY 11, 1961

EFFECTIVE FEBRUARY 12, 1961

Issued by W. O. GENTLE, Tariff Publishing Officer, 717 Market Street, San Francisco 3, Cal.

C—2400—Authy. EL-8361.

[fol. 563]

411

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212.

19th Revised Page.....333C
Cancels 18th Revised Page.....333C

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
CTO.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Item 7160-J

Iron or Steel Articles, as described in Items 7140 to 7155.
For list of articles taking Columns A, C, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

FROM / Except as Noted / TO	Column	Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)			Group 19 (Los Angeles) 641 ⑭Kaiser.....Cal. ⑮815 Torrance..... " 2010 ⑭Torrance..... " 5871 ⑭Kaiser..... "		
		MINIMUM WEIGHT (LBS.)								
		40,000	60,000	80,000	40,000	60,000	80,000	40,000	60,000	80,000
Group 37 (Sand Point)....	A,E,F,G	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
	C	128	⑫⑭106	⑭106	149	⑫⑭120	⑭120	149	⑫⑭120	⑭120
	H	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
Group 38 (Wallace).....	A,C,E,F,G	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
	H	128	.....	⑭106	149	.....	⑭120	149	.....	⑭120
Group 39 (Huntington)....	A, E, F, G	113	.....	⑭92	134	.....	⑭105	134	.....	⑭105
	C	113	⑫⑭92	⑭92	134	⑫⑭105	⑭105	134	⑫⑭105	⑭105
	H	113	.....	⑭92	134	.....	⑭105	134	.....	⑭105
	J	.....	⑫92	.....	.....	112	.....	.....	112	.....
▲8080 Bremerton.....Wash.	A,E,F,G,H	③120	.....	③97	③140	.....	③112	.....	.....	.....
	C	⑪120	.....	③97	③140	.....	③112	.....	.....	③127
	J	.....	③81	.....	.....	③102	.....	.....	.....	.....
‡8180 New Westminster .....B. C.	A	125	.....	⑭103 ∮⑫96	146	.....	⑭118 ∮⑫110	.....	.....	.....
	E, F, G, H	125	.....	⑭103	146	.....	⑭118	.....	.....	.....
	C	125	◆⑭103 ◆∮⑫96	⑭103 δ∮⑫96	146	◆⑭118 ◆∮⑫ 110	⑭118 δ∮⑫110	.....	.....	.....
8520 Grangeville.....Ida. 8590 Headquarters.... " 8635 Stites..... "	A,C,E,F,G	131	.....	110	152	.....	123	152	.....	123
	H	131	.....	110	152	.....	123	152	.....	123
b8660 Victoria.....B. C.	⑪A	.....	.....	109½	.....	.....	123½	.....	.....	.....
d8662 Prince George..B. C.	C	.....	⑰207	.....	.....	⑰221	.....	.....	.....	.....
8760 Vancouver.....B. C.	A	125	.....	∮⑫96 ⑭103	146	.....	∮⑫110 ⑭118	.....	.....	.....
	C	125	◆⑭∮96 ◆⑭103	⑭103 δ∮⑫96	146	◆∮⑫110 ◆⑭118	⑭118 δ∮⑫110	.....	.....	.....
	E, F, G, H	125	.....	⑭103	146	.....	⑭118	.....	.....	.....
8775 New Westminster .....B. C.	A	125	.....	⑭103 ∮⑫96	146	.....	⑭118 ∮⑫110	.....	.....	.....
	E, F, G, H	125	.....	⑭103	146	.....	⑭118	.....	.....	.....
	C	125	◆⑭103 ◆∮⑫96	⑭103 δ∮⑫96	146	◆⑭118 ◆∮⑫ 110	⑭118 δ∮⑫110	.....	.....	.....
a8960 Hilladale.....Wash.	J	.....	72	.....	.....	.....	.....	.....	.....	.....
8970 ①⑨Kent.....Wash.	A, C, E, F, G, H	111	.....	⑫90	131	.....	⑭102	.....	.....	.....
8980 ∮①Port AngelesWash.	A, C, E, F, G, H	151	.....	120	171	.....	134	.....	.....	.....
	J	.....	⑫108	.....	.....	124	.....	.....	.....	.....

⑫Expires as per Item 20.
◆Expires as per Item 20.
⑪Applies to 8080 Bremerton, Wash., only.
▲Change; no increase or reduction.
For Explanation of other Reference Marks, see Item 7160.2.

ISSUED DECEMBER 3, 1959

EFFECTIVE JANUARY 10, 1960

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C—2700—Authy. MK-6875.

[Col. 564]

412

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Item 7160.2-D

EXPLANATION OF ABBREVIATIONS

(Applies only in connection with rates making specific reference hereto)

①Via routes via Bieber, Cal., as provided in Section 6.
②Applies only via routes provided in Section 6 in connection with WP via Bieber, Cal., thence GN, Seattle, Wash., CMSP&P, Seattle, Wash., thence BFCF.
From Group 19, applies via routes provided in Section 6 via or in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
From 641 Kaiser and 815 Torrance, Cal., applies via ATSF, Barstow, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
③ From 2010 Torrance, Cal., applies via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
From 5071 Kaiser, Cal., applies via SP, Colton, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., to Seattle, Wash., on UP, CMSP&P, Seattle, Wash., thence BFCF.
④Via routes provided in Section 6 to Seattle, Wash., on GN, NP or UP, thence CMSP&P, Port Townsend, Wash., PTS, Discovery Jct., Wash., CMSP&P.
⑦Applies via routes in Section 6 in connection with SP to Portland (Park St.) or East Portland, Ore., thence UP, Chehalis, Wash., CMSP&P, or vice versa, or via SP, Portland (Park St.), Ore., GN or NP, Chehalis, Wash., CMSP&P, or vice versa.
⑪Rates also apply from sideline points to headline points.
⑭Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge No. 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
㉒Will also apply from Index 7430, Decoto, Cal., to points on UP via WP, Bieber, Cal., GN, Portland, Ore., thence UP. This route does not apply to points on UP east of Pendleton, Ore., designated on Page 117 as Index Nos. 18930 to 19135, incl.
㉓Also applies from Index 7430, Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP or UP to Seattle, Wash., CMSP&P Port Townsend, Wash., PTS, Discovery Junction, Wash., CMSP&P.
㉔Except as noted, applies via ATSF, Barstow, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
㉕Except as noted, applies via SP, Colton, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
㉖Except as noted, applies via PE, Los Angeles, Cal., thence via routes provided in Section 6 in connection with UP via Salt Lake City, Utah, and Huntington, Ore., or vice versa.
♦Applies only as a proportional rate on traffic moving beyond ⁴New Westminster, B. C., via CN-W or CP-W, or Vancouver, B. C., via CN-W, CP-W, PGE, and their rail connections to destinations in British Columbia (except North Vancouver, B. C.), or to destinations in Alberta on the CN-W or CP-W.
§Rates also apply on shipments accorded transit privileges at Hoquiam, Wash., on CMSP&P, as provided in Part D, Item 16350 Series of NPCFB Tariff 117-B, ICC 935, via routes provided in Section 6, in connection with WP via Bieber, Cal., to Chehalis, Wash., on GN, thence CMSP&P, Port Townsend, Wash., PTS, Discovery Jct., Wash., CMSP&P.
‡Also applies via routes provided in Section 6 in connection with SP to Seattle, Wash., on UP, thence CMSP&P, Sumas, Wash.-Huntingdon, B. C., BCE, or vice versa.
δ Does not apply on articles described by ⑭ reference mark, during period rate flagged with "♦," ⑭ and § references, are in effect.
a—Also applies via Routes G-25 and N-30 as provided in Section 7.
b—Applies only via Routes G-10, N-11 and U-11, as provided in Section 7.
d—Via routes provided in Section 6 of Tariff, to New Westminster, B. C., on GN, thence CN-W.
ⓓNot subject to Increases referred to in Item X-212.

(JT-9089)

For Explanation of Reference Marks, see Item 10.

[fol. 565]

NOT subject to Increases referred to in Items X-175, X-196 or X-206.
Subject, except as noted, to Increases referred to in Item X-212 and Supplement 130 (X-222 series).

28th Revised Page.....334C
Cancels 27th Revised Page.....334C

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
OTC.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7167-B
For list of articles taking Column A, C, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

FROM (Except as Noted) TO (JT-7557) (CJT-1270)	Column	Group 15 (San Francisco) Group 16 (Port Chicago) (4)	(5)	(6)	Group 17A (Los Angeles) (4)	(5)	(6)	Group 17D (Santa Barbara) (4)	(5)	(6)	⑦Group 19 (Los Angeles) ⑦641 Kaiser.....Cal. ⑦615 Torrance..... " ⑧2010 Torrance..... " ⑧971 Kaiser..... " (4)	(5)	(6)
11360 Rock Island .....Wash.	A,E,F,G,H.....	113	.....	(2)102	134	.....	(2)105	....	.....	.....	.....	.....	.....
	C.....	113	(2)(5)102	(2)102	134	(2)(5)105	(2)105	....	.....	.....	.....	.....	.....
	J.....	.....	84	.....	.....	105	.....	....	.....	.....	.....	.....	.....
11415 Mansfield .....Wash.	A,C,E,F,G,H..	133	.....	(2)111	153	.....	(2)124	....	.....	.....	.....	.....	.....
①12083 Parkdale .....Ore.	A,C,E,F,G,H..	110	.....	87	130	.....	101	....	.....	.....	.....	.....	.....
12357 Bremerton .....Wash.	A,E,F,G,H.....	120	.....	97	140	.....	112	....	.....	.....	.....	.....	.....
12389 Bangor... a	C.....	(2)120	◆(2)97 (2)81	97	(2)140	◆(2)112	112	....	.....	.....	.....	.....	(2)127
	J.....	.....	.....	.....	.....	102	.....	....	.....	.....	.....	.....	.....
12300 Everett .....Wash. 12380 Bellingham a 12385 South Bellingham.. a	Cancel; ⁿGroups 29A or 29B rates in Item 7159 apply.												
12000 Sumas..Wash.	A.....	119	.....	(2)97 ƒ(2)96	139	.....	(2)111 ƒ(2)110	....	.....	.....	.....	.....	.....
	C.....	119	◆(2)97 ◆(2)96	(2)97 ƒ(2)96	139	◆(2)111 ◆(2)ƒ 110	(2)111 ƒ(2)110	....	.....	.....	.....	.....	.....
	E,F,G,H. J.....	119	..... (2)94	(2)97	139	..... (2)115	(2)111	....	.... (2)115	....	....	....	....
ƒ(2)14940 Eugene .....Ore.	A, E.....	s100 ①90	.....	ⁿh(2)78	①110 ⁿas 120	.....	ⁿ(2)92	....	.....	.....	.....	.....	.....
14965 Bend....Ore. 18710 Bend..... a	A.....	(2)100	.....	(2)78	(2)120	.....	(2)92	151	.....	121	bu(2)(3) 120	.....	bu(2)(3) 92
	C.....	(2)100	◆(2)78	(2)78	(2)120	◆(2)92	(2)92	....	.....	.....	bu(2)(3) 120	bu(2)(3) ◆92	bu(2)(3) 92
	E,F,G,H.	(2)100	.....	(2)78	(2)120	.....	(2)92	....	.....	.....	bu(2)(3) 120	.....	bu(2)(3) 92

①Via routes provided in Section 6 to Hood River, Ore., on UP, thence MtH.
②Via Route U-60 provided in Section 7 for vice versa.
③Applies via ATSF, Barstow, Cal., thence via Route U-61 provided in Section 7.
④Applies via PE, Los Angeles, Cal., thence via Route U-61 provided in Section 7.
⑤Applies via SP, Colton, Cal., thence via Route U-61 provided in Section 7.
⑥Rates also apply from sideline points to headline points. u—Does not apply from or to Group 19 (Los Angeles) on ATSF.
⑦Will also apply from Index 7430, Decoto, Cal., to points on NP or UP via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.
⑧Rates apply from sideline points to headline points only.
⑨Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
⑩Does not apply to 12359, Bangor, Wash. ⑪Expires as per Item 20.
(2)Min. wt. 40,000 lbs. (3)Min. wt. 60,000 lbs. (4)Min. wt. 80,000 lbs.
ƒApplies only as a proportional rate on shipments destined to points in British Columbia (except North Vancouver, B. C.), on the BCE or CP-W, or via BCE for furtherance to CN-W destination points, or as a proportional rate on shipments destined points in Alberta on the CN-W or CP-W. ◆Expires as per Item 20.
§Reduction, except as noted.
a—Does not apply on Column E articles for which rates are named in Item 7205.
h—Does not apply on shipments consisting exclusively of articles for which rates are provided in Column F.
s—Applies southbound only. ①Not subject to Increases referred to in Item X-212.
For Explanation of other Reference Marks, see Item 10.

ISSUED FEBRUARY 12, 1961 EFFECTIVE MARCH 15, 1961

Issued by W. O. GENTLE, Tariff Publishing Officer, 717 Market Street, San Francisco 3, Cal.

C—2400—Authy. LD-8475.

NOT subject to Increases referred to in Items X-178, X-196 or X-806.
Subject, except as noted, to Increases referred to in Item X-212.

20th Revised Page.....334D
Cancels 19th Revised Page.....334D

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC....1583
CTC....143

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.
See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 7168-T

Iron or Steel Articles, as described in Items 7140 to 7155.
For list of articles taking Column A, B, C, D, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

TO (Except as Noted) (JT-8448)	COLUMN	FROM (Except as Noted) Group 15 (San Francisco) Group 16 (Port Chicago) MINIMUM WEIGHT (LBS.) (a)	(b)	(c)	Group 17A (Los Angeles) MINIMUM WEIGHT (LBS.) (a)	(b)	(c)
14985 Terrebonne....Ore. 15000 Madras..... "	A, E, F, G, H..... C..... J.....	(10)100 (10)100	 72	(10)78 (10)(14)78	(10)120 (10)120	 92	(9)92 (9)92
15245 Ruby.....Ore. 15255 Gresham..... " 15265 Boring..... "	A, E, F, G, H..... C.....	100 100	..... (9)(13)78	78 78	120 120	..... (9)(13)92	92 92
15290 (5)Port Townsend .....Wash. 15400 (3)Port Townsend "	A, C, E, F, G, H.... J.....	151	 103	120	171	 124	134
15405 (4)Port Angeles .....Wash.	A, C, E, F, G, H.... J.....	151	..... (11)103	120	171	 124	134
15810 Marcola.....Ore.	A, C, E, F, G, H.... B..... D..... J.....	(3)110 (5)124 ..... (5)124	.... (3)103 (5)78	(11)(13)87	(3)130 (5)170 ..... (5)152	..... (3)144 (5)99	(14)(11)101 ....
▲18529 Rockwood.....Ore.	For rates, see Item 7158▲ series.						
18605 Madras.....Ore. 18690 Terrebonne..... "	Cancel; ▲for rates, see Item 7173 series.						

(3)Does not apply from points on ATSF in connection with SP.
(5)Does not apply from Group 15 points on ATSF in connection with SP.
(4)Via Routes G-1, G-2, N-6 or U-5 provided in Section 7.
(5)Via Routes G-72, N-61 or U-71 provided in Section 7.
(10)Does not apply from or to Group 15 points on ATSF in connection with SP.
(14)Does not apply from or to points on ATSF in connection with SP.
(9)Rates also apply from sideline points to headline points.
(10)Rate northbound also applies on Couplings, vis.: Pipe or Tubing (not cast or wrought), plate or sheet, 16 gauge or thicker, and/or Pipe or Tubing, wrought, 16 gauge or thicker.
(11)Also applies from Index 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP, or UP, Seattle, Wash., thence BBT.
(13)Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge No. 16 or thicker, outside diameter 20 inches or over. Not subject to Rule 24 of WC nor to provision of Paragraphs 2 and 3 of Item 1017.
(a)Min. wt. 40,000 lbs. (b)Min. wt. 60,000 lbs. (c)Min. wt. 80,000 lbs.
(12)Expires as per Item 20.
▲Change; no increase or reduction.
▲Reduction.

ISSUED FEBRUARY 10, 1960
EFFECTIVE MARCH 18, 1960

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C—2700—Authy. MK-7111.

Correction 16517

Subject, except as noted, to Increases referred to in Items X-212 and X-223.

1st Revised Page.....335AA
Cancels Original Page.....335AA

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1352
CTC.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number, and indicates the line on which the point is located.

Iron or Steel Articles, as described in Items 7140 to 7155. Item 7173.4-A
For list of articles taking Column A, B, C, D, E, F, G, H or J rates, see Items 7140, 7145, 7150 and 7155.

FROM	TO (Except as Noted)	Column	Group 15 (San Francisco) Group 16 (Port Chicago)			Group 17A (Los Angeles)			(28)Group 19 (Los Angeles) on UP		
			MINIMUM WEIGHT (LBS.)								
			(40)	(40)	(40)	(40)	(40)	(40)	(40)	(40)	(40)
18003 Fir.....Ore.		A, E, F, G, H..	(14)100	.....	(14)78	(14)120	.....	(14)92	(14)120	.....	(14)92
18515 Ward..... "		C.....	(14)100	♦(17)78	(14)78	(14)120	♦(17)92	(14)92	(14)120	♦(17)92	(14)92
18525 Montaville..... "		D.....	.....	92	.....	.....	.....	.....	.....	.....	.....
18530 Fairview..... "											
to											
18620 Dillon..... "											
18665 Madras.....Ore.		A, E, F, G, H..	(14)100	.....	(14)78	(14)120	.....	(14)92	(14)120	.....	(14)92
18690 Terrebonne..... "		C.....	(14)100	.....	(14)(16)78	(14)120	.....	(14)92	(14)120	.....	(14)92
		J.....	.....	(51)72	.....	.....	92	.....	.....	92	.....
		A.....	125	.....	(15)103	146	.....	(15)118	.....	.....	.....
					ƒ(15)96			ƒ(15)110			
20360 Vancouver.....B. C.		C.....	125	♦(17)ƒ96	(15)103	146	♦(17)ƒ110	(15)118	.....	.....	.....
				♦(17)103	ƒ(15)96		♦(17)118	ƒ(15)110			
		E, F, G, H.....	125	.....	(15)103	146	.....	(15)118	.....	.....	.....

(14)Rates also apply from sideline points to headline points.
(16)Rate northbound also applies on Couplings, viz.: Pipe or Tubing (not cast or wrought), plate or sheet, 16 gauge or thicker, and/or Pipe or Tubing, wrought, 16 gauge or thicker.
(17)Applies only on Pipe or Tubing, plate or sheet, U. S. Standard Gauge 16 or thicker, as described in Item 7145, outside diameter 20 inches or over. Not subject to Rule 24 of WC, nor to provisions of paragraphs 2 and 3 of Item 1017.
(51)Will also apply from Index 7430 Decoto, Cal., to points on NP or UP, via WP, Bieber, Cal., GN, Portland, Ore., thence NP or UP.
(40)Min. wt. 40,000 lbs. (15)Min. wt. 60,000 lbs. (28)Min. wt. 80,000 lbs.
ƒApplies only as a proportional rate on traffic moving beyond Vancouver, B. C., via CN-W, CP-W, Pacific Great Eastern Ry., and their rail connections to destinations in British Columbia (except North Vancouver, B. C.), or to destinations in Alberta on the CN-W or CP-W.
(♦)Expires as per Item 20.
♦Expires as per Item 20.
For Explanation of other Reference Marks, see Item 10.

ISSUED MARCH 17, 1961

EFFECTIVE APRIL 23, 1961

Issued by W. O. GENTLE, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C—2400—Authy. F-8020.

Correction 18015

335AA

[fol. 568]

416

[fol. 569]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 15

Copies of pages of Pacific Southcoast Freight Bureau Tariff 1-S, ICC 1352, containing present rates on Automobiles from Oakland and Decoto, Cal. to points in Oregon, Washington and Northern Idaho, via Western Pacific to Bieber, Cal., Great Northern Railway to Portland, Oregon, thence Northern Pacific Railway Company or Union Pacific Railroad Company.

NOT subject to increases referred to in Items X-176, X-196, X-206, X-212 or Supplement 130 (X-223 series).

36th Revised Page.....472A
Cancels 35th Revised Page.....472A

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1382
OTC.....142

SECTION 4—CARLOAD COMMODITY RATES, IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The Number prefixed to a station name is the Index Number and indicates the line on which the point is located.

COMMODITY	BETWEEN (except as noted in individual items)	AND	Rate	Item
Vehicles and Other Articles, viz.: (See Note)	Group 28 (Seattle) Group 29A (Everett) Group 31 (Yakima) Group 32 (Sunnyside) Group 33 (Kennewick) Group 34 (Walla Walla) Group 35 (Dayton) Group 36 (Spokane) 11210 Wenatchee.....Wash. 11217 Welch..... "	Group 15 (San Francisco)... Group 16 (Port Chicago)... Group 17A (Los Angeles)...	263 263 364 @413	
ⓐTrailers, vehicle, with or without wheels, KD, or set up, without motive power. ⓐBodies, auto or truck, freight or passenger, finished or not finished, loose or in packages. ‡Lift Vans, SU. Min. wt. 12,000 lbs., except as noted. ⓐDoes not apply to shipments of Freight Trailers or Freight or Passenger Bodies in straight carloads from and to points for which rates are provided in Items 4467, 10320, 10330 to 10370, incl. ⓑDoes not apply on Logging Trailers in straight carloads from and to points for which rates in Item 10304 will apply. Note—Provisions of Rule 34 of WC or Item 1017 of this Tariff will not apply. ⓒMin. wt. 10,000 lbs.	Group 31 (Yakima) Group 32 (Sunnyside) Group 33 (Kennewick) Group 34 (Walla Walla) Group 35 (Dayton) Group 36 (Spokane) 11565 Spokane.....Wash. 14300 Spokane..... " 18040 Spokane..... " 20270 Spokane..... "	Group 19 (Los Angeles)..... 3825 Reno.....Nev. 7820 Reno..... "	364 a228 a228	10303-U
(JT-9839)	Group 28 (Seattle) on ⒶNP, ⒸPC, ⒷUP..... Group 36 (Spokane) on ⒹCamP, ⓇNP, ⓈSI, ⓉUP, ⓊWI&M..... ⓇⓈ12800 Everett.....Wash. ⓇⓈ13125 Yakima..... " ⓇⓈ13313 Richland..... " ⓇⓈ13314 Hanford Works... " ⓊⓉ19477 Hanford Works... " ⓊⓉ19480 Richland..... " ⓊⓉ19615 Yakima..... "	7410 Oakland.....Cal. 7430 Decoto..... "	n263 n263	

ⒶRates to points on NP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.

ⒷRates to points on UP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence UP.

ⒸRates to points on PCRR will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP or UP, Black River Jct., Wash., PCRR.

ⒹApplies via WP, Bieber, Cal., GN, Portland, Ore., NP (via Pasco, Wash.), Riparia, Wash., CamP or WP, Bieber, Cal., GN, Portland, Ore., UP, Riparia, Wash., CamP.

ⓇTo Index 17303 Parkwater, Wash., applies via WP, Bieber, Cal., GN, Portland, Ore., NP or UP, Spokane, Wash., SI. To Index 17305 Millwood, Wash., to and including 17348 Coeur D'Alene, Idaho, inclusive, applies via WP, Bieber, Cal., GN, Portland, Ore., UP, Spokane, Wash., SI.

ⓊApplies via WP, Bieber, Cal., GN, Portland, Ore., UP.

ⓉApplies via WP, Bieber, Cal., GN, Portland, Ore., NP, Palouse, Wash., WI&M.

ⓈApplies via WP, Bieber, Cal., GN, Portland, Ore., NP.

s—Applies southbound only.

n—Applies northbound only.

For Explanation of other Reference Marks, see Item 10.

ISSUED MARCH 6, 1961

EFFECTIVE APRIL 6, 1961

Issued by W. O. GENTLE, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C-2100—Authy. LD-8567.

NOT subject to Increases referred to in Items X-175, X-196, X-206 or X-212.

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10330-Q

Applies only in connection with rates making specific reference to this item

Column A rates apply on:

Vehicles, motor, and Other Articles (see Note 2), viz.:
Automobiles, freight, set up (see Notes 3 and 4)
Automobiles, passenger, set up (see Notes 1, 3 and 4)
Chassis, set up, with or without seat cabs
δ Trailers, freight, loose
Straight or mixed carloads, unless otherwise provided in rate item.
Min. wt. 10,000 lbs., unless otherwise provided in rate item.

Column B rates apply on:

Vehicle Parts, viz.:
Bodies (automobile), freight or passenger, finished or unfinished, set-up on skids (see Note 2).....Carloads.
Trailer Van Bodies, freight, SU, without running gear, 20 feet or longer in length.
Minimum weight 10,000 lbs., unless otherwise provided in rate item.

Note 1—With each Passenger Automobile not radio equipped, there may be included one Radio Receiving Set (automobile type), in boxes, at the rate applicable on the Passenger Automobile.

Note 2—Rates apply also on finished or unfinished extra parts (not otherwise provided for) of articles subject to this note, except that rates do not apply on Cyclometers, Headlights, Horns, Lamps, Searchlights, Speedometers nor Windshields. The aggregate weight of such parts is limited to 15 per cent of the total weight of the carload or of the minimum carload weight when greater than the actual weight, and must be shown separately on bill of lading by shipper.

Note 3—In connection with shipments of freight or passenger automobiles, rate includes loading at origin. When at its option such services are not performed by railroad, but are performed by shipper, an allowance will be paid to such shipper equal to actual cost of performing such service, but not to exceed $2.00 per automobile, maximum of $8.00 per carload for loading.

Note ◆⊕4—Rate includes unloading and delivery to locations with pick-up and delivery limits as defined in PSFB 247-J, ICC 1602 of PSFB, Agent, or NPCFB 95-L, ICC 977 of NPCFB, Agent (see Note 5) at all points. Unloading and delivery performed at its option by the railroad is limited to a maximum of four (4) automobiles per carload.

When at its option, such services are not performed by railroad, but are performed by receiver, an allowance will be paid to receiver equal to actual cost of performing such services, but not to exceed $5.00 per automobile, maximum of $20.00 per carload for unloading and delivery.

Note 5—Where PU&D limits are not defined in PSFB Tariff 247-J or NPCFB Tariff 95-L, rates will include unloading and delivery to locations within city limits, or if city limits are not defined, to locations within one mile of carrier's freight station.

δ Does not apply on Logging Trailers in straight carloads from points in Group 17A; rates in Item 10304 and class or combination rates will apply.

◆In connection with the CamP the provisions of this note apply only at the following points:

Craigmont.....Ida. Grangeville.....Ida. Lewiston.....Ida. Orofino.....Ida.

⊕When destined points on UP, the provisions of this note apply only at the following points:

Aberdeen.....Wash.	Fir.....Ore.	La Grande.....Ore.	Seattle.....Wash.
Arlington.....Ore.	Garfield.....Wash.	Longview.....Wash.	Spokane..... "
Athena..... "	Grandview..... "	Madras.....Ore.	Sumner..... "
Auburn.....Wash.	Grass Valley.....Ore.	Milton-Freewater..... "	Sunnyside..... "
Baker.....Ore.	Haines..... "	Montesano..... "	Tacoma..... "
Bend..... "	Heppner..... "	Moscow.....Ida.	Tekoa..... "
Castle Rock.....Wash.	Hermiston..... "	Olympia.....Wash.	The Dalles.....Ore.
Centralia..... "	Hood River..... "	Pendleton.....Ore.	Umatilla..... "
Chehalis..... "	Hoquiam.....Wash.	Pilot Rock..... "	Vancouver.....Wash.
Cheney..... "	Huntington.....Ore.	Pomeroy.....Wash.	Wallace.....Ida.
Colfax..... "	Joseph..... "	Pullman..... "	Walla Walla.....Wash.
Condon.....Ore.	Kellogg-Wardner.....Ida.	Puyallup..... "	Wallowa.....Ore.
Dayton.....Wash.	Kelso.....Wash.	Redmond.....Ore.	Wasco..... "
Dishman..... "	Kennewick..... "	Richland.....Wash.	Winlock.....Wash.
Elgin.....Ore.	Kent..... "	Rockford..... "	Woodland..... "
Enterprise..... "			Yakima..... "

⁴Change; no increase or reduction.

NOT subject to Increases referred to in Items X-178, X-196, X-206 or X-212.
Subject, except as noted, to Increases referred to in Supplement 120 (X-223 series).

4th Revised Page.....473B Cancels 3rd and 2nd Revised Page 473B

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1282
OTC.....142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10340-Y Cancels 10340-X and 10340-W

Vehicles, motor, or **Vehicle Parts** and **Other Articles**, as described and subject to min. wt. and other provisions in Item 10330.
For list of articles taking Column A or B rates, see Item 10330.

TO ▼ FROM ▶	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	Cal. 715 Los Angeles 796 Rivera 806 Inglewood 823 Long Beach (Via Route 1 below)		Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS					
	A	A	A	B	A	B
Group 25 (Klamath Falls)	148	①148	230	317	⑤230	276
Group 26 (Portland), except as shown		219			‡300	328
Group 27 (Portland), except as shown	a219		300	328		
Group 28 (Seattle), except as shown	b Ⓔ227 b ‡247	Ⓔ227 ‡247	Ⓔ308 ‡328	328	Ⓔ308 ‡328	328
Group 29A (Everett)	247	247	328	328	328	328
Group 29B (Bellingham)	300	300	363	363	363	363
8450 Lewiston..Ida.	c348	348			412	412
8485 Culdesac..Ida. 8490 Rubens.... " 8495 Craig Jct.. " 8500 Craigmont. " 8510 Cottonwood " 8520 Grangeville "	c382	382			455	455
8555 Peck.....Ida. 8570 Orofino.... "	c369	369			437	437
8625 Kamiah...Ida. 8630 Kooskia... "	c431 c436	431 436			490 494	490 494

TO ▼ FROM ▶	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	Cal. 715 Los Angeles 796 Rivera 806 Inglewood 823 Long Beach (Via Route 1 below)		Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS					
	A	A	A	B	A	B
9060 Enumclaw .....Wash.	247		328	328		
10005 Cle Elum .....Wash.	252		328	328		
10035 Ellensburg. "	262		328	328		
10105 ⑥Moses Lake.... "	346	346	406	406	406	406
10150 Rosalia.... "		348			412	412
10415 Prineville.Ore.	②264	③264	③328	③328	③328	③328
10620 Chiloquin.Ore. 10645 Kirk..... " 10685 Chemult... "	219		300	328		
10710 Vancouver .....Wash.	219	219	300	328	300	328
10940 Edmonds .....Wash. 10960 Marysville. " 10980 Stanwood.. " 10995 Mt. Vernon " 11000 Burlington. "	247	247	328	328	328	328
11030 Sedro-Woolley. .....Wash.	247	247	328	328	328	328

Route 1—Via routes provided in Section 6 in connection with WP via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6 in connection with SP, except as noted.
①Does not apply from Richmond, Cal. (Index 25).
②Via Route 1 above to Prineville Jct., Ore., on OT, thence CofP.
③Via Route 2 above to Prineville Jct., Ore., on OT or UP, thence CofP.
⑤Does not apply from points on ATSF.
⑥In connection with routes in Section 6, applicable via Bieber, Cal., applies only on traffic originating at or destined to points on ATSF, SN, TS or WP. In connection with routes in Section 6, applicable to or from Portland (Park St.) or East Portland, Ore., thence via UP, Chehalis, Wash., CMSP&P, or vice versa, applies only in connection with traffic originating at or destined to points on ATSF, PE, SP or VE.
Ⓔ Expires as per Item 20.
‡ Does not apply during period of effectiveness of rates prefixed Ⓔ.
For Explanation of other Reference Marks, see Items 10 and 10340.5.

ISSUED JANUARY 18, 1961
Issued on 10 days' notice; ICC Permission 90759.

EFFECTIVE JANUARY 31, 1961

C—3400—Authy. RM-8417.

Issued by W. O. GENTLE, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

Correction 17872

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10340.5

EXPLANATION OF REFERENCE MARKS

(Applies only in connection with rates making specific reference hereto)

a—Also applies from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., to Willbridge, East St. Johns, St. Johns (Portland Municipal Terminal 4) and North Portland, Ore., and Vancouver, Wash., on NP via WP, Bieber, Cal., GN, Portland, Ore., NP; also to East Portland, Albina, St. Johns, Kenton and North Portland, Ore., and Vancouver, Wash., on UP via WP, Bieber, Cal., GN, Portland, Ore., UP.

b—(1) Rates to points on NP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.
(2) Rates to points on UP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence UP.
(3) Rates to points on PCRR will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP or UP, Black River Jct., Wash., PCRR.

c—Rates apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., NP (via Pasco, Wash.), Riparia, Wash., CamP, or via WP, Bieber, Cal., GN, Portland, Ore., UP, Riparia, Wash., CamP.

⑪Not subject to Increases referred to in Items X-175, X-196, X-206 or X-212.

②Not subject to Increases referred to in Item X-175. (RA 6326)

△Item 10340 formerly shown on 21st Revised Page 474 transferred to Original Page 473B.
★Change.

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

▲Item 10360-T

Vehicles, motor, or Vehicle Parts and Other Articles, as described and subject to min. wt. and other provisions in Item 10330.
For list of articles taking Columns A or B rates, see Item 10330.

TO ▼	FROM▶▶ Group 15 (San Francisco) on ATSF, SN, or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond...Cal. (Via Route 2 below)	715 Los Angeles, Cal. 796 Elsara..... " 803 Inglewood..... " 823 Long Beach..... (Via Route 1 below)		Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS					
	A	A	A	B	A	B
11635 Chewelah..Wash.	384	384	465	462	465	462
11660 Colville...Wash.	384	384	465	477	465	477
11805 Republic..... "	384	384	465	506	465	506
11840 Newport..... "	385	385	459	459	459	459
11850 Priest River..Ida.	396	396	461	461	461	461
11875 Sand Point... "	396	396	474	474	474	474
11905 Bonners Ferry..... "	420	420	489	493	489	493
12357 Bremerton.Wash.	a262	262	.....	....	328	328
12360 Bangor..... "	a262	262	.....	....	328	328
12680 Kirkland..Wash.						
12730 Bothell..... "						
12745 Issaqua..... "	a247	247	.....	....	328	328
12755 Snoqualmie Falls..... "						
12760 Snoqualmie.. "						

TO ▼	FROM▶▶ b7410 Oakland...Cal. b7430 Decoto.....	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond...Cal. (Via Route 2 below)	Group 17A (Los Angeles) (Via Route 2 below)
	COLUMNS		
	A	A	A, B
12765 North Bend .....Wash.			
12790 Snohomish... "			
12800 Everett..... "	247	247	328
12810 Arlington.... "			
12845 Sedro-Woolley "			
12880 Bellingham .....Wash.	300	300	363
12885 South Bellingham..... "	300	300	363
12900 Sumas..... "	300	309	372
13000 Enumclaw... "	247	247	328
13045 Orting..... "	247	247	328
13060 Cle Elum.... "	258	258	328
13085 Roslyn..... "	262	262	328
13105 Ellensburg... "	262	262	328
13125 Yakima..... "	262	262	328
13135 Moxee City.. "	270	270	328
13180 Naches..... "	270	270	328
13230 Wapato...Wash.			
13255 Toppenish.... "			
13270 Sunnyside.... "			
13275 Grandview... "	262	262	328
13300 Prosser..... "			
13315 Kennewick... "			
13320 Pasco..... "			
13465 Walla Walla .....Wash.	290	290	353
13530 Waitsburg... "	304	304	365
13565 Dayton..... "	309	309	373
13615 Athena.....Ore.	290	290	350
13645 Pendleton.... "	282	282	344
13735 Connell...Wash.	320	320	383
13885 Lind..... "	320	320	383
13900 Ritzville..Wash.	330	330	393
13925 Sprague..... "	346	346	406
13950 Cheney..... "	348	348	412
13975 Reardan..... "	348	348	412
13985 Davenport... "	348	348	412
14005 Creston...Wash.	②348	②348	②412
14010 Wilbur..... "	②348	②348	②412
14020 Almira..... "	②347	②347	②410
14035 Coulee City.. "	②346	②346	②406
14070 Spangle..... "	348	348	412
14095 Rosalia..... "	348	348	412

Route 1—Via routes provided in Section 6 in connection with WP via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6 in connection with SP, except as noted.
▲Change; no increase or reduction.
①Rates apply via Adco, Wash., only.
a—Rates to points on NP will apply from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.
b—Applies via WP, Bieber, Cal., GN, Portland, Ore., NP.

NOT subject to Increases referred to in Items X-178, X-196, X-206 or X-212.

24th Revised Page.....476 Cancels 23rd Revised Page.....476

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent
TARIFF 1-S

ICC.....1382
CTC.....142

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

▲Item 10360-V

Vehicles, motor, or Vehicle Parts and Other Articles, as described and subject to min. wt. and other provisions in Item 10330.
For list of articles taking Column A or B rates, see Item 10330.

FROM / TO (Except as noted)	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond, Cal. (Via Route 2 below)	715 Los Angeles, 796 Rivera, 803 Inglewood, 823 Long Beach, Cal. (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)		
	COLUMNS					
	A	A	A	B	A	B
14130 Farmington ....Wash.						
14140 Garfield... "						
14150 Palouse.... "						
14170 Pullman... "						
14200 Colton..... "						
14215 Genesee...Ida.	a348	348	.....	.....	412	412
14230 Moscow... "						
14260 Kendrick.. "						
14265 Juliaetta... "						
14300 Spokane.Wash.						
14355 Coeur d'Alene ....Ida.						
14435 Sand Point ....Ida.	a396	396	.....	.....	474	474
14565 Mullan... "	a402	402	.....	.....	477	477
14575 Wallace... "	a402	402	.....	.....	477	477
14965 Bend.....Ore.	.....	219	.....	.....	300	328
14975 Redmond.Ore.						
14980 Prineville Jct..... "	219	219	300	328	300	328
15000 Madras.... "						
15030 Maupin.... "						
15255 Gresham..Ore.	247	247	328	328	328	328

FROM / TO (Except as noted)	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond, Cal. (Via Route 2 below)	715 Los Angeles, 796 Rivera, 803 Inglewood, 823 Long Beach, Cal. (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)	
	COLUMNS				
	A	A	A	B	A	B
15660 Chiloquin.Ore.						
15680 Kirk..... "						
15715 Chemult... "	.....	219	.....	.....	300	328
15775 Oakridge.. "						
15780 Westfir.... "						
15795 Lowell....Ore.	.....	219	.....	.....	300	.....
15810 Marcola..Ore.		§③247			§328	
15814 Hyland.... "	.....	⑤③227	.....	.....	⑤308	328
15830 Ashland..Ore.	.....	③151	.....	.....	③232	③308 ⑤318
15855 Medford..Ore.	.....	③151	.....	.....	③232	③317 ⑤327
15867 White City. "						
15880 Grants Pass ....Ore.	.....	③165	.....	.....	③246	328
15905 Glendale..Ore.						
15940 Myrtle Creek... "	.....	③196	.....	.....	③277	328
15955 Roseburg.. "						
15960 Sutherlin.Ore.						
15965 Oakland... "	.....	219	.....	.....	300	328
15975 Drain..... "						

Route 1—Via routes provided in Section 6, in connection with WP via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6, in connection with SP, except as noted.
a—Rates to points on NP will apply from 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., thence NP.
③Does not apply from Richmond, Cal. (Index 25).
⑤Does not apply from points on ATSF.
⑥Will not apply from Long Beach, Cal., on ATSF.
⑫Applies only from Long Beach, Cal., on ATSF.
㉒Expires as per Item 20.
▲Change; no increase or reduction.
§Does not apply during period of effectiveness of rates prefixed ㉒.

ISSUED JULY 29, 1960

EFFECTIVE SEPTEMBER 15, 1960

Issued by M. A. NELSON, Tariff Publishing Officer, 717 Market Street, San Francisco 3, Cal.

C—2500—Authy. C-7776.

Correction 17374

NOT subject to Increases referred to in Items X-178, X-196, X-206 or X-212.

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

Item 10365-J

Vehicles, motor, or Vehicle Parts and Other Articles, as described and subject to minimum weight and other provisions in Item 10330.

For list of articles taking Column A or B rates, see Item 10330.

FROM / (Except as Noted) / TO	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	715 Los Angeles, 796 Rivera, 805 Inglewood, 823 Long Beach (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)
	COLUMNS			
	A	A	A	B	A	B
15085 Cottage Grove ....Ore.	.....	219	.....	.....	300	328
16000 Creswell... "						
16075 Mill City.Ore.	.....	⑫⑦227 ‡⑦247	.....	.....	⑫308 ‡328	328
16155 Cushman.Ore.	.....	⑦243	.....	.....	④⑫ 308 ⑦④ 324	328
16170 Reedsport. "						
16195 Coos Bay.. "						
16210 Coquille... "						
16220 Myrtle Point ....Ore.	.....	.....	.....	.....	⑫308 ‡328	328
16335 Toledo...Ore.	.....	⑫⑦227 ‡⑦247	.....	.....	⑫308 ‡328	328
16360 Dallas..... "						
16370 Falls City. "						
16425 Willamina. "						
16565 Tillamook. "						
17348 Coeur d'Alene ....Ida.	a348	348	.....	.....	412	412
17425 Sand Point ....Ida.	a396	396	.....	.....	474	474

FROM / (Except as Noted) / TO	Group 15 (San Francisco) on ATSF, SN or WP Group 16 (Port Chicago) (Via Route 1 below)	Group 15 (San Francisco) on SP Group 16 (Port Chicago) 25 Richmond (Via Route 2 below)	715 Los Angeles, 796 Rivera, 805 Inglewood, 823 Long Beach (Via Route 1 below)	Group 17A (Los Angeles) (Via Route 2 below)
	COLUMNS			
	A	A	A	B	A	B
17475 Bonners Ferry ....Ida.	a408	408	.....	.....	489	493
17548 Vernonia..Ore.	247	⑥⑦247	⑦328	⑦328	⑥⑦ 328	⑥⑦ 328
17585 Rainier...Ore.	⑫227 ‡247	⑫227 ‡247	328	328	⑫308 ‡328	328
17595 Clatskanie. "						
17645 Seaside.... "						
17690 Camas..Wash.	219	219	300	328	300	328
17695 Washougal. "						
17725 Stevenson.. "						
17755 Bingen-White Salmon.. "						
17780 Klickitat .....Wash.	⑫227 ‡247	⑫227 ‡247	328	328	⑫308 ‡328	328
17920 Kennewick .....Wash.	202	202	328	328	328	328
17925 Pasco..... "	202	202	328	328	328	328
17970 Washtucna. "	320	320	383	383	383	383
18035 Nemours Spur..... "	348	348	412	412	412	412
18040 Spokane... "	.....	348	.....	.....	412	412

Route 1—Via Routes provided in Section 6, in connection with WP, via Bieber, Cal., except as noted.
Route 2—Via routes provided in Section 6, in connection with SP, except as noted.
a—Also applies from Index 7410 Oakland, Cal., and 7430 Decoto, Cal., via WP, Bieber, Cal., GN, Portland, Ore., UP, Spokane, Wash., SI.
⑦Does not apply from Richmond, Cal. (Index 25).
⑥Does not apply from points on ATSF.
⑤Via ATSF, Stockton, Cal., SP, Portland (Park St.) or East Portland, Ore., SP&S.
④Via Route 2 above to Portland (Park St.) or East Portland, Ore., on SP, thence SP&S.
⑦Also applies via ATSF, Stockton, Cal., SP, Portland (Park St.) or East Portland, Ore., SP&S.
⑫Expires as per Item 20.
‡Does not apply during period of effectiveness of rates prefixed ⑫.
▲Reduction.

ISSUED MAY 5, 1960

EFFECTIVE JUNE 13, 1960

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street, San Francisco 3, Cal.

C—2000—Authy. MK-7448.

SECTION 4—CARLOAD COMMODITY RATES IN CENTS PER 100 LBS.

See "Index of Points From and To Which Rates Apply" for points designated by Group Numbers.
The number prefixed to a station name is the Index Number and indicates the line on which the point is located.

★Item 10370-M

Vehicles, motor, or **Vehicle Parts** and other articles, as described and subject to minimum weight and other provisions in Item 10330.

For list of articles taking Column A or B rates, see Item 10330.

FROM→ / TO ↓ (RA 6326)	₰a7410 Oakland, Cal. ₰a7430 Decoto	Group 16 (San Francisco on SP. Group 16 (Port Chicago) — 25 Richmond, Cal.	Group 17A (Los Angeles)	
	COLUMNS			
	A	A	A	B
18093 Fir ..... Ore.				
18535 Troutdale.... "				
18570 Hood River... "				
18575 Mosier..... "				
18605 The Dalles... "	219	219	300	328
18665 Madras..... "				
18695 Prineville Jct.. "				
18700 Redmond..... "				
18710 Bend..... "				
18725 Wasco..... Ore.				
18740 Moro..... "				
18750 Grass Valley.. "	247	247	328	328
18753 Kent..... "				
18790 Arlington..... "				
18815 Condon..... "				
18835 Ione..... Ore.	253	253	328	328
18850 Heppner..... "	266	266	328	328
18860 Boardman.... "	262	262	328	328
18865 Umatilla..... "	262	262	328	328
18870 Hermiston.... "	262	262	328	328
18875 Stanfield..... "	278	278	339	339
18880 Echo..... "	281	281	340	340
18920 Pilot Rock... Ore.	290	290	353	353
18925 Pendleton..... "	282	282	344	344
18990 La Grande.... "	317	317	375	375
19040 Wallowa..... "	344	344	404	404
19050 Enterprise.... "	350	350	415	415
19070 Union Jct..... "	325	325	384	384
19100 Baker..... "	328	328	404	404
19135 Huntington... "	373	373	434	434
19225 Milton..... "	290	290	353	353

FROM→ / TO ↓	₰a7410 Oakland, Cal. ₰a7430 Decoto	Group 16 (San Francisco on SP. Group 16 (Port Chicago) — 25 Richmond, Cal.	Group 17A (Los Angeles)	
	COLUMNS			
	A	A	A	B
19310 Walla Walla ..... Wash.	290	290	353	353
19340 Prescott..... "	304	304	365	365
19350 Waitsburg.... "	304	304	365	365
19370 Dayton..... "	309	309	373	373
19410 Starbuck..... "	320	320	383	383
19430 Dodge..... "	329	329	392	392
19445 Pomeroy..... "	329	329	392	392
19475 Kennewick.Wash.				
19535 Grandview.... "	262	262	328	328
19555 Sunnyside..... "				
19615 Yakima..... "				
19705 La Crosse..Wash.	320	320	383	383
19725 Washtucna.... "	320	320	383	383
19760 Connell..... "	320	320	383	383
19800 Colfax.....Wash.				
19830 Pullman..... "				
19845 Moscow..... Ida.				
19860 Garfield....Wash.	348	348	412	412
19870 Farmington... "				
19885 St. John..... "				
19935 Tekoa.Wash.-Ida.				
19955 Plummer....Ida.				
20050 Kellogg-Wardner ..... Ida.	402	402	477	477
20075 Wallace..... "				
20110 Fairfield...Wash.				
20120 Rockford..... "				
20160 Dishman..... "	348	348	412	412
20265 Cheney..... "				
20270 Spokane..... "				

★Change.
₰Reduction.
a—Applies via WP, Bieber, Cal., GN, Portland, Ore., UP.

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 16

Pacific Southcoast Freight Bureau Tariff No. 297-D (and Supplements 3 and 4), ICC. No. 1678, containing present rates on Automobiles from points in California on the Western Pacific Railroad Company to points on the Northern Pacific Railway and Union Pacific Railroad Company via Western Pacific Railroad Company to Bieber, California, Great Northern Railway to Portland, Oregon, thence Northern Pacific Railway or Union Pacific Railroad Company.

Subject, except as noted, to Increases in Rates and Charges referred to in Item X-223

SUPPLEMENT
-TO-
ICC 1678

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent

SUPPLEMENT 4

-TO-

FREIGHT TARIFF 297-D

Supplements 3 and 4 contain all changes

JOINT RATES

ON

MOTOR VEHICLES

Applicable only on Vehicles loaded on Trailers and transported on Flat Cars

FROM	TO
CALIFORNIA	IDAHO MONTANA OREGON WASHINGTON

THIS TARIFF DOES NOT APPLY ON INTRASTATE TRAFFIC

TRAILER FLAT CAR TARIFF

ISSUED FEBRUARY 8, 1961. EFFECTIVE MARCH 15, 1961.

Issued by W. O. GENTLE, Tariff Publishing Officer,
717 Market Street,
San Francisco 3, Cal.

600--2-12-9. Authy. OE-8487 Also filed with Ore.

[fol. 579]

427

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
X-223-A	Increase in Rates and Charges (CJT-1657)	Except as otherwise provided in connection with particular rates and charges, rates and charges in this Tariff, and in supplements thereto, are subject to Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof. (See Exception) Exception.--** Line-haul rates are not subject to increases provided in Item 122, Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof, but are subject to an increase of $1.50 per trailer. The form of this publication is permitted by authority of ICC Permission 88884, dated September 2, 1960.

**-Wording "(Does not apply in connection with GN)" eliminated♁.
♁-Reduction.

[Vol. 580]

Subject, except as noted, to Increases in Rates and Charges referred to in Item X-222

SUPPLEMENT
—TO—
I C C 1678

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent

SUPPLEMENT 3

—TO—

FREIGHT TARIFF 297-D

Cancels Supplements 1 and 2
Supplement 3 contains all changes

JOINT RATES

ON

MOTOR VEHICLES

Applicable only on Vehicles loaded on Trailers and transported on Flat Cars

FROM	TO
CALIFORNIA	IDAHO MONTANA OREGON WASHINGTON

THIS TARIFF DOES NOT APPLY ON INTRASTATE TRAFFIC

TRAILER FLAT CAR TARIFF

ISSUED JANUARY 10, 1961 EFFECTIVE FEBRUARY 16, 1961

Issued by
W. O. GENTLE, Tariff Publishing Officer
717 Market Street,
San Francisco 3, Cal.

[fol. 581]

429

Also filed with Ore.

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
3 65	Substitution of Box Car Service for Trailer on Flat Car Service	Subject to provisions of Note 1, rail carrier may substitute Multi-level or box car service in lieu of trailer on flat car service to destinations and at rates named in this tariff. Note 1.—Substitution will only be at carrier's option.
♦ 68	Substitution of Motor Service for Rail Service (JT 270)	(Applies only in connection with TS&D and only in conjunction with rates published in Section 2) Unless shipper directs otherwise, TS&D may at their option substitute rail service between Seattle and Kennewick, Pasco, Spokane and Wenatchee, Wash., and via the rail carriers shown herein for their actually available services via highways for which TS&D have lawful operation rights as common carrier.
3 70-A	Cancel; provisions of Item 65 will apply.	

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN MONTANA	FROM POINTS ON SP IN CALIFORNIA: Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose — Column A	Column B	Column C	Route (see Section 3)	ƒLos Angeles, Raymer, South Gate (Los Angeles) — Column A	Column B	Column C	Route (see Section 3)
	Billings	$152.40	$123.70	$103.60	11, 12, 13-A, 13-B, 14	$167.50	$135.80	$113.70	11, 12, 13-A, 13-B, 14
	Butte	135.50	110.20	92.30	11, 12, 13-A, 13-B, 14, 25, 26-B	160.30	130.00	108.90	11, 12, 13-A, 13-B, 14, 26-A
	Glasgow	175.60	142.30	119.10	11, 13-B	190.70	154.30	129.20	11, 13-B
	Glendive	177.10	143.50	120.10	12, 13-A, 14	192.20	155.60	130.20	12, 13-A, 14
▲425-B	Great Falls	145.20	118.00	98.90	11, 13-B	160.30	130.00	108.90	11, 13-B
	Kalispell	143.80	116.80	97.90	11, 13-B	187.00	151.40	126.70	11, 13-B
	Laurel	152.40	123.70	103.60	11, 12, 13-A, 13-B, 14	167.50	135.80	113.70	11, 12, 13-A, 13-B, 14
	Livingston	139.80	113.60	95.20	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Miles City	168.70	136.70	114.50	12, 13-A, 14	183.60	148.70	124.50	12, 13-A, 14
	Missoula	135.50	110.20	92.30	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Sidney	183.20	148.30	124.20	11, 12, 13-A, 13-B, 14	198.40	160.50	134.30	11, 12, 13-A, 13-B, 14

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN MONTANA	FROM POINTS ON WP IN CALIFORNIA: Decoto, Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose — Column A	Column B	Column C	Route (see Section 3)
	Billings	$152.40	$123.70	$103.60	24
	Butte	135.50	110.20	92.30	24, 26
	Glasgow	175.60	142.30	119.10	24
▲450-B	Great Falls	145.20	118.00	98.90	24
	Kalispell	143.80	116.80	97.90	24
	Laurel	152.40	123.70	103.60	24
	Sidney	183.20	148.30	124.20	24

ƒApplies only in connection with Routes 12, 13-A, 14, 25, 26-A or 26-B.

For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) (JT-9770)	FROM POINTS ON SP IN CALIFORNIA: Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose			δLos Angeles, Raymer, South Gate (Los Angeles)			Route (see Section 3)
		Column A	Column B	Column C	Column A	Column B	Column C	
500-B	Bend, Ore.	$73.00	$59.90	$52.50	$109.00	$88.70	$76.50	26-C, (Fe)26-D, 26-E
	‡Kennewick	90.00	73.20	62.30	126.00	102.00	86.30	5, 6, 7, 8, 9 or 10
	‡Pasco	90.00	73.20	62.30	126.00	102.00	86.30	
	Renton	78.50	(2)64.00 (3)71.50	54.70	116.50	(3)94.40 (5)105.70	80.00	1, 2, 3, 4
	δSeattle	78.50	(2)64.00 (3)71.50	54.70	116.50	(3)94.40 (5)105.70	80.00	16-A, 16-B, 16-C
	‡Spokane	116.00	94.00	79.70	154.00	124.40	105.00	11, 12, 13, 14, 15
	Vancouver	76.00	62.90	55.50	112.00	91.70	79.50	26-G, 26-H, 26-I, 26-J
	‡Wenatchee	100.00	81.20	69.00	136.00	110.00	93.00	16

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) (JT-9770)	FROM POINTS ON WP IN CALIFORNIA: Decoto, Melrose (Oakland), Milpitas, Oakland, San Francisco, San Jose			Route (See Section 3)
		Column A	Column B	Column C	
550-B	Bend, Ore.	$73.00	$59.90	$52.50	26F
	‡Kennewick	90.00	73.20	62.30	(1)18 or (1)20
	‡Pasco	90.00	73.20	62.30	(1)18, 19
	Renton	78.50	(2)64.00 (3)71.50	54.70	(1)18, 21, (1)22 or (1)23
	δSeattle	78.50	(2)64.00 (3)71.50	54.70	24-A, (1)24-B, (1)24-C
	‡Spokane	116.00	94.00	79.70	(1)18, (1)20 or 24
	Vancouver	76.00	62.90	55.50	26-K
	‡Wenatchee	100.00	81.20	69.00	24

δApplies only in connection with Routes 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 26-D, 26-E, 26-H, 26-I or 26-J.

(Fe)Applies to points named only.

For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9770)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Aberdeen	$37.20	$29.76	$24.80	$74.40	$49.60	
	Almira	**	**			**	
1000-B	Anacortes	33.38	26.70	22.25	66.76	44.50	
	Arlington	29.25	23.40	19.50	58.50	39.00	
	Auburn	17.95	14.36	11.96	35.90	23.93	
	Bellevue	17.95	14.36	11.96	35.90	23.93	
	Bellingham	37.98	30.98	25.32	75.96	50.64	
	Bothell	18.87	15.09	12.58	37.74	25.16	
	Bremerton	28.10	22.48	18.73	56.20	37.47	
	Brewster	**	**			**	
	Camas	57.50	46.00			76.67	
	Cashmere	**	**			**	
	Castle Rock	42.00	33.60			56.00	
1010-B	Centralia	32.00	25.60			42.67	
	Chehalis	34.31	27.45			45.75	
	Chelan	**	**			**	
	Cheney	**	**			**	
	Chewelah	**	**			**	
	Cle Elum	27.25	21.80	18.17	54.50	36.33	
	Colfax	**	**			**	
	Colville	**	**			**	
	Coulee City	**	**			**	
	Coupeville	40.50	32.40	27.00	81.00	54.00	
	Davenport	**	**			**	
	Dayton	**	**			**	
	Deer Park	**	**			**	
	Dishman	**	**			**	27
	Douglas	**	**			**	
1020-B	East Stanwood	28.67	22.94	19.11	57.34	38.23	
	Eatonville	25.81	20.65	17.21	51.62	34.41	
	Edmonds	21.77	17.41	14.51	43.54	29.03	
	Ellensburg	38.75	31.00	25.83	77.50	51.67	
	Elma	31.68	25.34	21.12	63.36	42.24	
	Enumclaw	20.43	16.34	13.62	40.86	27.24	
	Ephrata	**	**			**	
	Everett	23.50	18.80	15.66	47.00	31.33	
	Ferndale	39.50	31.60	26.33	79.00	52.67	
	Friday Harbor	46.42	37.14	23.54	70.62	47.08	
	Gig Harbor	26.61	21.29	17.74	53.22	35.48	
1030-B	Goldendale	84.50	67.60			112.66	
	Grand Coulee	**	**			**	
	Grand View	**	**			**	
	Hoquiam	38.50	30.80	25.66	77.00	51.33	
	Issaquah	17.95	14.36	11.96	35.90	23.93	
	Kalama	45.50	36.40			60.67	
	Kelso	43.75	35.00			58.33	
	Kennewick	**	**			**	
	Kent	17.95	14.36	11.96	35.90	23.93	
	Kirkland	17.95	14.36	11.96	35.90	23.93	
	Klickitat	70.50	56.40			94.00	
1040-A	Leavenworth	**	**			**	
	Lind	**	**			**	
	Longview	44.50	35.60			59.33	
	Lynden	41.00	32.80	27.33	82.00	54.67	
	Marysville	24.94	19.95	16.63	49.88	33.25	
	Metaline Falls	**	**			**	
	Monroe	22.64	18.11	15.09	45.28	30.19	

****Rates eliminated; ‡‡rates otherwise provided from Seattle, Wash., will apply.**

For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9770)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Montesano	$34.31	$27.45	$22.88	$68.62	$45.75	
	Morton	32.47	25.98	21.94	64.94	47.15	
	Mt. Vernon	31.16	24.93	20.78	62.32	41.55	
	Moses Lake	**	**			**	
1050-B	Naches	**	**	33.66	**	**	
	Newport	**	**			**	
	North Bend	21.06	16.85	14.04	42.12	28.08	
	Oak Harbor	38.00	30.40	25.50	76.00	51.00	
	Odessa	**	**			**	
	Okanogan	**	**			**	
	Olympia	25.80	20.64	17.20	51.60	34.40	
	Omak	**	**			**	
	Oroville	**	**			**	
	Othello	**	**			**	
	Palouse	**	**			**	
1060-A	Pasco	**	**			**	
	Pomeroy	**	**			**	
	Port Angeles	27.46	21.97	18.30	54.92	36.61	
	Port Orchard	27.98	22.38	18.65	55.96	37.31	
	Port Townsend	25.46	20.37	16.97	50.92	33.95	
	Poulsbo	33.33	26.66	22.22	66.66	44.44	
	Prosser	**	**			**	
	Pullman	**	**			**	
	Puyallup	18.25	14.60	12.17	36.50	24.33	
	Quincy	**	**			**	
	Raymond	42.25	33.80	28.16	84.50	56.33	
	Renton	14.50	11.60	9.66	29.00	19.33	
	Republic	**	**			**	27
	Richland	**	**			**	
1070-B	Ridgefield	51.60	41.90			68.66	
	Ritzville	**	**			**	
	Rockford	**	**			**	
	Rosalia	**	**			**	
	Seattle	14.50	11.60	9.66	29.00	19.33	
	Sedro Wooley	34.05	27.24	16.03	48.10	32.07	
	Shelton	30.11	24.09	20.08	60.22	40.15	
	Snohomish	21.06	16.84	14.04	42.12	28.08	
	Snoqualmie	20.75	16.60	13.95	41.50	28.66	
	Spokane	**	**			**	
	Sprague	**	**			**	
1080-B	Stevenson	67.00	53.60			89.33	
	Sumner	18.56	14.85	12.37	37.12	24.75	
	Sunnyside	**	**			**	
	Tacoma	18.61	14.89	12.41	37.22	24.81	
	Tonasket	**	**			**	
	Toppenish	**	**			**	
	Twisp	**	**			**	
	Vancouver	53.25	42.60			71.00	
	Walla Walla	**	**			**	
	Wapato	**	**			**	
	Washtucna	**	**			**	
	Waterville	**	**			**	
	Wenatchee	**	**			**	
1090-A	Wenlock	38.00	30.40			50.67	
	White Salmon	65.00	52.00			86.67	
	Winslow	38.33	30.66	25.55	76.66	51.11	
	Woodlawn	48.00	38.40			64.00	
	Woshongel	58.25	46.60			77.67	
	Yakima	**	**			**	

**Rates eliminated; ‡‡rates otherwise provided from Seattle, Wash., will apply.
For explanation of other reference marks, see concluding page(s) of this Supplement.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, D or E rates.

Item	TO POINTS IN WASHINGTON ON TS&D (JT-9770)	FROM △Seattle, Wash. Column A	Column B	Column D	Column E	ROUTE (See Section 3)
	Almira	‡‡69.97	$48.48	$139.44	‡‡93.29	
	Brewster	53.05	34.94	106.10	70.73	
	Cashmere	39.45	24.06	78.90	52.60	
	Chelan	45.86	29.19	91.72	61.15	
	Cheney	55.45	36.86	110.90	73.93	
‡‡	Chewelah	65.60	44.98	131.20	87.47	
1092	Colfax	56.50	37.70	113.00	75.33	
	Colville	69.97	48.48	139.94	93.29	
	Coulee City	52.14	34.21	104.28	69.52	
	Davenport	60.14	40.61	120.28	80.19	
	Dayton	40.04	28.53	80.08	53.39	
	Deer Park	56.69	37.85	113.38	75.59	
	Dishman	49.50	32.10	99.00	66.00	
	Douglass	42.88	26.80	85.76	57.17	
	Ephrata	47.59	30.57	95.18	63.45	
	Fairfield	59.85	40.38	119.70	79.80	
	Grand Coulee	58.75	39.50	117.50	78.33	
‡	Grandview	35.86	21.18	71.72	47.81	
1094	Grange	40.83	25.15	81.66	54.44	
	Ione	71.55	49.74	143.10	95.40	
	Kennewick	23.50	11.30	47.00	31.33	
	Leavenworth	41.31	25.55	82.62	55.08	
	Lind	40.30	24.74	80.60	53.73	
	Metaline Falls	74.44	50.47	148.88	99.25	27
	Moses Lake	49.50	32.20	99.00	66.00	
	Naches	‡53.58	35.20	‡106.76	‡71.17	
	Newport	63.01	42.91	126.02	84.01	
	Odessa	42.66	26.63	85.32	56.88	
	Okanogan	57.91	38.83	115.82	77.21	
‡‡	Omak	58.96	39.67	117.92	78.61	
1096	Oroville	68.25	47.10	136.50	91.00	
	Othello	39.51	24.11	79.02	52.68	
	Palouse	67.50	46.50	135.00	90.00	
	Pasco	23.50	11.30	47.00	31.33	
	Pomeroy	48.70	31.46	97.40	64.94	
	Prosser	33.56	19.35	67.12	44.75	
	Pullman	63.75	43.50	127.50	85.00	
	Quincy	42.70	26.66	85.40	56.93	
	Republic	83.25	59.10	166.50	111.00	
	Richland	29.45	16.06	58.90	39.27	
	Ritzville	44.76	28.31	89.52	59.68	
‡	Rockford	56.69	37.85	113.38	75.59	
1098	Rosalia	58.41	39.23	116.82	77.88	
	Spokane	49.50	32.10	99.00	66.00	
	Sprague	61.86	41.99	123.72	82.48	
	Sunnyside	37.87	22.79	75.74	50.49	
	Tekoa	62.72	42.68	125.44	83.63	
	Tonasket	64.00	43.70	128.00	85.33	
	Toppenish	42.66	26.63	85.32	56.88	
	Twisp	57.65	34.62	115.30	76.87	
	Walla Walla	37.30	22.34	74.60	49.73	
	Wapato	43.71	27.47	87.42	58.28	
‡	Washtucna	40.82	25.16	81.64	54.43	
1099	Waterville	41.94	26.05	83.88	55.92	
	Wenatchee	33.50	19.30	67.00	44.67	
	Wilbur	58.56	39.35	117.12	78.08	
	Yakima	45.55	28.94	91.10	60.73	

‡‡Reduction, except as noted.

△Rates apply only in connection with shipments accorded substitute service under provisions of Item 68.

For explanation of other reference marks, see concluding page(s) of this Supplement.

Item	ROUTE	EXPLANATION OF ROUTE NUMBERS (Subject to Item 1500) ROUTING IN CONNECTION WITH PROPORTIONAL RATES IN SECTION 1
		To Renton, Wash.:
	1	SP, Portland, Ore., GN, Seattle or Black River, Wash., PC.
	2	SP, Portland, Ore., NP, Seattle or Black River, Wash., PC.
	3	SP, Portland, Ore., NP.
	4	SP, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Kennewick, Wash.:
	5	SP, Portland, Ore., NP.
	6	SP, Portland, Ore., SP&S.
	7	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
	8	SP, Portland, Ore., UP.
1510-A		To Pasco, Wash.:
	9	SP, Portland, Ore., NP.
	10	SP, Portland, Ore., SP&S.
		To Billings, Butte, Glasgow, Glendive, Great Falls, Kalispell, Laurel, Livingston, Miles City, Missoula, or Sidney, Montana, Spokane, Wash.:
	11	SP, Portland, Ore., GN.
	12	SP, Portland, Ore., NP.
	13	SP, Portland, Ore., SP&S.
	13-A	SP, Portland, Ore., SP&S, Spokane, Wash., NP.
	13-B	SP, Portland, Ore., SP&S, Spokane, Wash. GN.
	14	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
		To Spokane, Wash.:
	15	SP, Portland, Ore., UP.
		To Wenatchee, Wash.:
	16	SP, Portland, Ore., GN.
		To Seattle, Wash.:
	♦16-A	SP, Portland, Ore., GN.
	♦16-B	SP, Portland, Ore., NP.
	♦16-C	SP, Portland, Ore., UP.
		(JT-9770)
		To Kennewick, Pasco, Renton or Spokane, Wash.
	18	WP, Bieber, Cal., GN, Portland, Ore., NP.
		To Pasco, Wash.
	19	WP, Bieber, Cal., GN, Bend, Ore., OT, Wishram, Wash., SP&S.
		To Kennewick or Spokane, Wash.
	20	WP, Bieber, Cal., GN, Portland, Ore., UP.
		To Renton, Wash.
	21	WP, Bieber, Cal., GN, Seattle or Black River, Wash., PC.
		To Renton, Wash.
1520-A	22	WP, Bieber, Cal., GN, Portland, Ore., NP, Seattle or Black River, Wash., PC.
		To Renton, Wash.
	23	WP, Bieber, Cal., GN, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Billings, Butte, Glasgow, Great Falls, Kalispell, Laurel or Sidney, Montana, Spokane or Wenatchee, Wash.
	24	WP, Bieber, Cal., GN.
		To Seattle, Wash.:
	♦24-A	WP, Bieber, Cal., GN.
	♦24-B	WP, Bieber, Cal., GN, Portland, Ore., NP.
	♦24-C	WP, Bieber, Cal., GN, Portland, Ore., UP.

For explanation of other reference marks, see below.

EXPLANATION OF REFERENCE MARKS

Reference Marks		EXPLANATION
♦	B	Reduction.
♦	B	Increase.
▲	A	Change in wording which results in neither increases nor reductions in charges.
‡	B	In connection with shipments moving beyond, via Route 27, rates apply only on Automobiles, passenger, set-up.
①	B	Applies only from Decoto or Melrose (Oakland), Cal.
②	B	Maximum weight of each vehicle not to exceed 2,600 lbs.
③	B	Rate does not apply on shipments covered by rate prefixed ②.
□(with number enclosed)	A	Reissued from supplement bearing number enclosed within the square. See Item 100.

A—Addition.
B—Brought forward without change.

[Vol. 584a]

I C C 1678
Cancels
I C C 1670

PACIFIC SOUTHCOAST FREIGHT BUREAU, Agent

FREIGHT TARIFF 297-D

Cancels Freight Tariff 297-C

JOINT RATES

ON

MOTOR VEHICLES

Applicable only on Vehicles loaded on Trailers and transported on Flat Cars

FROM	TO
CALIFORNIA	IDAHO MONTANA OREGON WASHINGTON

THIS TARIFF DOES NOT APPLY ON INTRASTATE TRAFFIC

TRAILER FLAT CAR TARIFF

ISSUED NOVEMBER 30, 1960 EFFECTIVE JANUARY 5, 1961

Issued by M. A. NELSON, Tariff Publishing Officer,
717 Market Street,
San Francisco 3, Cal.

Also filed with Ore.

[fol. 585]

TABLE OF CONTENTS

SUBJECT	Page	Item
Abbreviations, explanation of	20	
Application of Rates	5	200
Additional Services	5	210
Carrier's Liability	5	230
Commodity Description	7	400
Condition of Motor Vehicles	5	240
Consecutive Numbers	4	40
C.O.D. Shipments	5	280
Definition of Terms	5	250
Diversion or Reconsignment	5	260
Explanation of Reference Marks	20	
Gas, Oil and Grease	5	290
Increase in Rates and Charges	3	X-223
Index to Commodities	2	
Index of Stations From Which Rates Apply	2	
Index of Stations To Which Rates Apply	2, 3	
Legal Holidays	6	300
Less than Trailer Loads	6	305
Method of Cancelling Items	4	75
Method of Denoting Reissued Matter in Supplements	4	100
Partial Unloading	6	310
Participating Carrier	2	
Pickup or Delivery Limits	5	205
Protection of Batteries	6	320
Protection of Cooling System	5	220
Rates (Section 1) Proportional Rates	7, 8	425,450,500,550
Rates (Section 2) Basing Rates	9 to 18	600 to 1430
Reference to Tariffs, Items, Notes, etc	4	20
Refused Shipments	6	330
Routing (Section 3):		
Routing Instructions	19	1500
Explanation of Route Numbers	19, 20	1510-1550
Split Delivery	6	340
Storage Charges (Origin)	6	350
Substitution of Box Car Service for Trailer on Flat Car Service	4	70
Substitution of Motor Service for Rail Service	4	55
Terminal Handling Charge (Origin)	6	360
Transfer Between Connecting Carriers	4	35

PARTICIPATING CARRIERS

Carrier Abbreviations	NAME OF CARRIER
CamP	Camas Prairie Railroad Company.
GN	Great Northern Railway Company.
NP	Northern Pacific Railway Company.
OT	Oregon Trunk Railway.
PC	Pacific Coast Railroad Company.
SP	Southern Pacific Company (See Southern Pacific Lines).
SP	Southern Pacific Lines: Southern Pacific Company (Pacific Lines) (French, N. M., and west, Ogden, Utah, and west, Portland, Ore., and south)
SI	Spokane International Railroad Company.
SP&S	Spokane, Portland and Seattle Railway Co.
TS&D	Transport Storage & Distributing Co.
UP	Union Pacific Railroad Company.
WWV	Walla Walla Valley Railway Company.
WP	Western Pacific Railroad Company (The).

INDEX OF COMMODITIES

COMMODITY	Item	COMMODITY	Item
Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up.	400 to 1430		

ALPHABETICAL LIST OF STATIONS FROM WHICH RATES APPLY

CALIFORNIA

Decoto on WP
Los Angeles on SP
Melrose (Oakland) on SP, WP
Milpitas on SP, WP
Oakland on SP, WP
Raymer on SP
San Francisco on SP, WP
San Jose on SP, WP
South Gate (Los Angeles) on SP

ALPHABETICAL LIST OF STATIONS TO WHICH RATES APPLY

IDAHO

Bonners Ferry
Coeur d'Alene
Craigmont
Grangeville
Kellogg
Lewiston
Moscow
Orofino
Potlatch
St. Maries
Sandpoint
Wallace

[fol. 5861]

437

ALPHABETICAL LIST OF STATIONS FROM OR TO WHICH RATES APPLY

MONTANA

Big Timber	Conrad	Hamilton	Missoula	Sweet Grass
Billings	Cut Bank	Havre	Philipsburg	Terry
Boulder	Deer Lodge	Helena	Plentywood	Thompson Falls
Bozeman	East Glacier Park	Hysham	Polson	Three Forks
Browning	Eureka	Kalispell	Poplar	Townsend
Butte	Fort Benton	Laurel	Red Lodge	West Glacier
Chester	Forsyth	Lewistown	Scobey	White Fish
Chinook	Gardiner	Libby	Shelby	Wibaux
Choteau	Glasgow	Livingston	Sidney	Wolf Point
Circle	Glendive	Malta	Stanford	
Columbus	Great Falls	Miles City	Superior	

OREGON

Arlington	Condon	Madras	Pilot Rock	St. Helens
Astoria	Heppner	Milton-Freewater	Rainier	The Dalles
Bend	Hermiston	Mono	Redmond	Vernonia
Clatskanie	Hood River	Pendleton	Seaside	

WASHINGTON

Aberdeen	Deer Park	Kent	Pomeroy	Sunnyside
Almira	Dishman	Kirkland	Port Angeles	Tacoma
Anacortes	Douglas	Klickitat	Port Orchard	Tekoa
Arlington	East Stanwood	Leavenworth	Port Townsend	Tonasket
Auburn	Eatonville	Lind	Poulsbo	Toppenish
Bellevue	Edmonds	Longview	Prosser	Twisp
Bellingham	Ellensburg	Lynden	Pullman	Vancouver
Bingen-White Salmon	Elma	Marysville	Puyallup	Walla Walla
Bothell	Enumclaw	Metaline Falls	Quincy	Wapato
Bremerton	Ephrata	Monroe	Raymond	Washtucna
Brewster	Everett	Montesano	Renton	Waterville
Camas	Fairfield	Morton	Republic	Wenatchee
Cashmere	Ferndale	Moses Lake	Richland	Wenlock
Castle Rock	Friday Harbor	Mt. Vernon	Ridgefield	White Salmon
Centralia	Gig Harbor	Naches	Ritzville	Wilbur
Chehalis	Goldendale	Newport	Rockford	Winlock
Chelan	Grand Coulee	North Bend	Rosalia	Winslow
Cheney	Grandview	Oak Harbor	Seattle	Woodland
Chewelah	Grange	Odessa	Sedro Woolley	Woodlawn
Cle Elum	Hoquiam	Okanogan	Shelton	Woshongel
Colfax	Ione	Olympia	Snohomish	Yakima
Colville	Issaquah	Omak	Snoqualmie	
Coulee City	Kalama	Oroville	Spokane	
Coupeville	Kelso	Othello	Sprague	
Davenport	Kennewick	Pasco	Stevenson	
Dayton		Palouse	Sumner	

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
X-223	Increase in Rates and Charges (JT-9620)	Except as otherwise provided in connection with particular rates and charges, rates and charges in this Tariff, and in supplements thereto, are subject to Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof. (See Exception) Exception.—(Does not apply in connection with GN). Line-haul rates are not subject to increases provided in Item 122 Tariff of Increased Rates and Charges X-223, PSFB ICC 1671, supplements thereto or successive issues thereof, but are subject to an increase of $1.50 per trailer. The form of this publication is permitted by authority of ICC Permission 88884, dated September 2, 1960.

For explanation of other reference marks, see concluding page(s) of this Tariff.

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

Item	SUBJECT	APPLICATION
20	Reference to Tariffs, Items, Notes, Rules, Etc.	Where reference is made in this Tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such Tariffs and reissues of such items, notes, rules, etc.
35	Transfer Between Connecting Carriers	The joint rates published herein include all charges for switching, drayage or other transfer services at intermediate interchange points on shipments handled through and not stopped for special services at such intermediate interchange points.
40	Consecutive Numbers	Where consecutive numbers are represented in this Tariff by the first and last numbers connected by word "to" or a hyphen, they will be understood to include both of the numbers shown. If the first number only bears a reference mark, such reference mark also applies to the last number shown and to all numbers between the first and the last number.
55	Substitution of Motor Service for Rail Service	(Applies only in connection with NP, OT, SP&S or UP and only in conjunction with rates published in Section 2.) Shipments handled under this Tariff are subject to the provisions of Western Trunk Line Tariff 457-B, ICC A-4341. Western Trunk Line Committee Agent PSFB Agent ICC 1668 supplements thereto or successive issues thereof, and where substitute service as authorized therein is performed, rates named herein will apply.
60	Substitution of Motor Service for Rail Service	a–(Applies only in connection with GN and only in conjunction with rates published in Section 2.) Motor Vehicles transported under the rates provided herein to destinations on GN in Idaho and Washington named in Section 2 of this tariff may at the option of the GN be delivered in substituted Motor Vehicle Service of the Transport Storage & Distributing Co. (MC-108121) from the ramp of the PCRR Co., in Renton, Wash., in lieu of rail service from and to points in Section 2 hereof. b–(Applies only in connection with NP and only in conjunction with rates published in Section 2.) Motor Vehicles transported under the rates provided herein to destinations on NP in Washington named in Section 2 of this tariff may at the option of the NP be delivered in substituted Motor Vehicle Service of the Transport Storage & Distributing Co. (MC-108121) from the ramp of the PCRR Co. in Renton, Wash., in lieu of rail service from and to points in Section 2 hereof. c–(Applies only in connection with UP or CamP and only in conjunction with rates published in Section 2.) Motor Vehicles transported under the rates provided herein to destinations on UP or CamP in Idaho, Oregon and Washington named in Section 2 of this tariff may at the option of the UP or CamP be delivered in substituted Motor Vehicle Service of the Transport Storage & Distributing Co. (MC-108121) from the ramp of the PCRR Co. in Renton, Wash., in lieu of rail service from and to points in Section 2 hereof.
70	Substitution of Box Car Service for Trailer-on-Flat Car Service	(Applies only in connection with CamP, GN, NP, OT, SP&S, UP or WWV) Carriers can at their option substitute box car service in lieu of trailer on flat car service to destinations and at rates named in Section 2 of this Tariff.
75	Method of Cancelling Items	As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels 445, and Item 365-B cancels Item 365-A in a prior supplement, which, in turn, cancelled Item 365.
100	Method of Denoting Reissued Matter In Supplements	Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number, the number being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date consult the supplement in which the reissued matter first became effective.

RULES AND OTHER GOVERNING PROVISIONS

SPECIAL RULES AND REGULATIONS UNLIMITED

Item	SUBJECT	APPLICATION
200	Application of Rates	Rates published herein apply only on motor vehicles described in Item 400 loaded on trailers supplied and transported by carriers from consignor's facilities within pickup limits (See Note) at origin to consignee's facilities within delivery limits (See Note) at destination. The rates and charges published herein include a pickup service of vehicles and loading on trailers within the pickup limits (See Note) at origins and unloading of trailers and delivery of vehicles within delivery limits (See Note) at destination, except as provided in individual items in Section 2. Note.—Except as provided in Item 205, pickup and delivery limits referred to above are as described in NPCFB Tariff 95-M, ICC 1004 and in PSFB Tariff 247-J, ICC 1602, except that where areas are not defined in NPCFB Tariff 95-M nor PSFB Tariff 247-J, delivery limits are defined as city limits or if city limits are not defined, delivery limits will be that area within one mile radius of the post office.
205	Pickup or Delivery Limits (Exception to Note in Item 200	Los Angeles, Cal.—An area beginning at Sepulveda Blvd. and Roscoe Blvd., south on Sepulveda Blvd. to Wilshire Blvd., east on Wilshire Blvd. to Vermont Ave., south on Vermont Ave. to Imperial Highway, east on Imperial Highway to Los Angeles River, north along Los Angeles River to Pasadena Freeway, northeasterly along Pasadena Freeway to San Fernando Road, northwesterly along San Fernando Road to Tuxford Street, southwesterly on Tuxford Street to Roscoe Blvd., thence west on Roscoe Blvd. back to beginning. Includes substations of Raymer and South Gate, Calif. San Jose—City Limits, also territory north thereof within boundary of Eastshore Freeway on the west; Alviso-Milpitas Road (State Highway 9) and Calaveras Road on the north; West Dempsey Road to Landess Avenue, west on Landess Avenue to Capitol Avenue and on Capitol Avenue to Berryessa Road on the east; southwesterly on Berryessa Road to San Jose City limits.
210	Additional Services	If any additional services not otherwise provided for herein are performed by any carrier party hereto at shipper's request, the actual cost for such labor and material in such cases plus ten percent shall be the charge for such service.
220	Protection of Cooling System	During the season when cooling system of vehicles transported requires protection from freezing, such protection will be furnished by and at the risk of the shipper.
230	Carrier's Liability	Except as otherwise provided, carrier will not be liable for damages caused by leaking brake fluids, lubricants, battery acids and/or cooling system anti-freeze solution and gasoline or by freezing of radiator.
240	Condition of Motor Vehicles	Carrier will not accept for transportation any vehicle which cannot, due to size or special construction, be safely handled by the carrier in full compliance with all state laws and regulations of the Interstate Commerce Commission.
250	Definition of Terms	(a) The term "Pick-up," as used in this tariff, refers to the service of origin carrier in calling for vehicles and receipting therefor at shipper's place of business or other point of origin designated by shipper. (b) The term "Delivery Service," as used in this tariff refers to the service of carrier at destination for the unloading and delivery of vehicles at consignee's dock, platform, doorway, or other facility readily and conveniently accessible to trailer, or such other point designated by the consignee or consignor. (c) The term "Vehicle" or "Vehicles," as used in this tariff means automobiles described in Item 400. (d) The term "Trailer" as used in this tariff means highway equipment in which automobiles are loaded when handled over the highway.
260	Diversion or Reconsignment	(a) No charge will be made for a diversion or reconsignment if order for such diversion or reconsignment is received by carrier at point of origin in time to permit it to be accomplished before shipment leaves carrier's terminal at point of origin. (b) When a shipment is stopped at request of shipper short of its original destination, the charges from point of origin to point stopped will apply plus $2.00 per vehicle stopped short. (c) When shipments are reconsigned in transit or after arrival at billed destination to a point beyond the point of diversion, but before delivery to consignee, the rate to apply will be that to the final destination plus a charge of $2.00 per vehicle. (d) When shipper orders a shipment returned to point of origin before delivery to original consignee, same rate will apply for the return movement from point at which shipment is diverted as applies from origin to point at which shipment is stopped. (e) All orders for diversion or reconsignment must be given or confirmed in writing by shipper.
280	C.O.D. Shipments	C.O.D. shipments will be handled when required, on a straight bill of lading with the amount of the collection to be made indicated in bold figures and in plain sight of the body of the bill of lading, at a charge of $1.25 for each vehicle, provided driver is not required to wait more than one hour after vehicles are tendered for delivery. Thereafter, for each hour, or fraction thereof, of waiting time, there shall be a charge of $2.50, the total charge so produced not to exceed $20.00 for any 24-hour period. Delivery to consignee shall be made upon payment of all charges in cash or certified check, except when authorized by shipper, in writing, uncertified checks will be accepted, made payable to the consignor and the carrier will assume no further liability. Carrier shall remit each C.O.D. collection directly to the consignor or other person designated by the consignor as payee promptly and within 10 days after delivery of the C.O.D. shipment to the consignee.
290	Gas, Oil and Grease	The consignor or shipper shall on all shipments at his own expense have vehicles in running condition, filled with the proper amounts of grease, oil and have a minimum of one gallon of gasoline in each vehicle at point of origin.

RULES AND OTHER GOVERNING PROVISIONS

SPECIAL RULES AND REGULATIONS UNLIMITED

Item	SUBJECT	APPLICATION
300	Legal Holidays	Legal Holidays, as referred to in this tariff are (See Note): New Year's Day — Labor Day Washington's Birthday — Thanksgiving Day Memorial Day — Christmas Independence Day Note.—When a legal holiday falls on Sunday, the following Monday will be treated the same as one of the foregoing holidays.
305	Less Than Trailer-Loads	When shipments of less than four vehicles are tendered as a trailer-load, charges will be assessed as follows: (a) Three vehicles per trailer: One and one-third (1⅓) times the Column "A" rate to destination where each vehicle is unloaded and delivered. (b) Two vehicles per trailer: Two times the Column "A" rate to destination where each vehicle is unloaded and delivered.
310	Partial Unloading	(a) Shipments of four or more vehicles per trailer may be stopped in transit for partial unloading, subject to a charge of $2.00 per each vehicle in the load. (b) Rate for each vehicle will be the rate from origin to destination where unloaded and delivered except that if any vehicles are moved over the highway resulting in a direct back-haul or moved in excess of 50 miles from point at which first vehicle is unloaded (see Note), rate for all four or more vehicles will be assessed at the rate applicable to highest rated destination plus stop-off charge. (see exception) Note.—Mileage referred to above is published in Agent Earp's Washington Highway Freight Tariff Bureau, Mileage Guide 14, MF-ICC-10. Exception.—The provisions of this paragraph will not apply to mixed trailer-loads of vehicles containing vehicles destined to Port Angeles or Port Townsend when the remaining vehicles loaded on the trailer are destined for Seattle.
320	Protection of Batteries	Carriers will not be liable for damage caused by freezing of batteries.
330	Refused Shipments	(a) On shipments refused by consignee or undelivered for any reason beyond control of the delivering carrier, shipper shall be immediately notified at point of origin of carrier's inability to deliver such shipments. If consignee refuses to accept shipment for storage, then delivering carrier at its option may either: (1) Hold such shipment in its possession subject to storage charge of $2.00 per vehicle per day or fraction thereof when held beyond a period of 48 hours computed from the first 7 a.m. (Sundays and legal holidays excepted) after consignee refused to accept shipment for storage, or (2) Place such shipment in safe storage at destination or within a reasonable distance therefrom (in bonded warehouse if possible). (b) When delivering carrier places such shipment in storage with the original consignee or at any other place as permitted in paragraph (a)-(2) above, it shall secure proper storage receipt in shipper's name and such storage charges as may accrue will be borne by the shipper. (c) A charge of $2.00 per vehicle will be assessed for each vehicle placed in storage under the provisions of paragraph (a) above.
340	Split Delivery	Shipments of four or more vehicles per trailer may be unloaded and delivered at different locations at one destination subject to a charge of $2.00 per vehicle delivered at the split delivery point.
350	Storage Charges Origin	For vehicles held in originating carrier's terminal at point of origin at shipper's request, or for completion of a trailer load shipment beyond a period of 48 hours, figured from the first 7 a.m. following hour of receipt of first vehicle by originating carrier (Sunday and legal holidays excluded), originating carrier will charge shipper a storage charge of 25 cents per vehicle per day or fraction thereof figured from the first 7 a.m. following the expiration of the first 48-hour period provided herein.
360	Terminal Handling Charge Origin	Vehicles delivered to origin carrier and returned to shipper at shipper's request before leaving origin carrier's terminal at point of origin shall be subject to a handling charge of $1.00 per vehicle.

Item	COMMODITY DESCRIPTION
400	Column A Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up. Minimum: Four motor vehicles per trailer. Straight or mixed trailer-loads. Column B Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up. Automobiles, passenger, set up. Minimum: Five motor vehicles per trailer. Straight or mixed trailer-loads. Column C Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, passenger, set up, maximum weight of each vehicle not to exceed 2,600 lbs. Minimum: Six motor vehicles per trailer. Column D Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up. Minimum: Two motor vehicles per trailer. Column E Rates Apply on: (See Note) Vehicles, motor, viz.: Automobiles, freight, set up, Automobiles, passenger, set up. Minimum: Three motor vehicles per trailer. Straight or mixed trailer-loads. Note.—Will also apply on vehicles protected by plastic covers furnished by shippers and plastic covers will be returned to shippers. (For rates, see Sections 1 and 2)

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

FROM POINTS ON SP IN CALIFORNIA

Item	TO POINTS IN MONTANA	Melrose (Oakland) Milpitas ‡Oakland ‡San Francisco San Jose			Route (see Section 3)	‡Los Angeles Raymer South Gate (Los Angeles)			Route (see Section 3)
		Column A	Column B	Column C		Column A	Column B	Column C	
	Billings	$152.40	$123.70	$103.60	11, 12, 13-A, 13-B, 14	$167.50	$135.80	$113.70	11, 12, 13-A, 13-B, 14
	Butte	135.50	110.20	92.30	11, 12, 13-A, 13-B, 14, 25, 26-B	160.30	130.00	108.90	11, 12, 13-A, 13-B, 14, 26-A
	Glasgow	175.60	142.30	119.10	11, 13-B	190.70	154.30	129.20	11, 13-B
	Glendive	177.10	143.50	120.10	12, 13-A, 14	192.20	155.60	130.20	12, 13-A, 14
	Great Falls	145.20	118.00	98.90	11, 13-B	160.30	130.00	108.90	11, 13-B
425	Kalispell	143.80	116.80	97.90	11, 13-B	187.00	151.40	126.70	11, 13-B
	Laurel	152.40	123.70	103.60	11, 12, 13-A, 13-B, 14	167.50	135.80	113.70	11, 12, 13-A, 13-B, 14
	Livingston	139.80	113.60	95.20	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Miles City	168.70	136.70	114.50	12, 13-A, 14	183.60	148.70	124.50	12, 13-A, 14
	Missoula	135.50	110.20	92.30	12, 13-A, 14	160.30	130.00	108.90	12, 13-A, 14
	Sidney	183.20	148.30	124.20	11, 12, 13-A, 13-B, 14	198.40	160.50	134.30	11, 12, 13-A, 13-B, 14

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

FROM POINTS ON WP IN CALIFORNIA

Item	TO POINTS IN MONTANA	Decoto, Melrose (Oakland), Milpitas, ‡Oakland, ‡San Francisco, San Jose			Route (see Section 3)
		Column A	Column B	Column C	
	Billings	$152.40	$123.70	$103.60	24
	Butte	135.50	110.20	92.30	24, 26
	Glasgow	175.60	142.30	119.10	24
450	Great Falls	145.20	118.00	98.90	24
	Kalispell	143.80	116.80	97.90	24
	Laurel	152.40	123.70	103.60	24
	Sidney	183.20	148.30	124.20	24

‡Applies only in connection with Routes 12, 13-A, 14, 25, 26-A or 26-B.
‡Applies only in connection with Route 26.

[fol. 588a]

442

SECTION 1—PROPORTIONAL RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are proportional rates which apply from points in California to points in Montana, Oregon and Washington named herein and may be used only as factors in arriving at through rates by adding to the proportional rates named in this Section the Basing rates named in Section 2.

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted)	FROM POINTS ON SP IN CALIFORNIA						Route (see Section 3)
		Melrose (Oakland) Milpitas δOakland δSan Francisco San Jose			δLos Angeles Raymer South Gate (Los Angeles)			
		Column A	Column B	Column C	Column A	Column B	Column C	
500	Bend.....Ore.	$73.00	$59.90	$52.50	$109.00	$88.70	$76.50	26-C, δ(Fm)26-D, 26-E
	‡Kennewick.....	90.00	73.20	62.30	126.00	102.00	86.30	5, 6, 7, 8, 9 or 10
	‡Pasco.....	90.00	73.20	62.30	126.00	102.00	86.30	
	Renton.....	78.50	(3)64.00 (3)71.50	54.70	116.50	(3)94.40 (3)105.70	80.00	1, 2, 3, 4
	‡Spokane.....	116.00	94.00	79.70	154.00	124.40	105.00	11, 12, 13, 14, 15
	Vancouver.....	76.00	62.90	55.50	112.00	91.70	79.50	26-G, 26-H, 26-I, 26-J
	‡Wenatchee..... (JT-9378)	100.00	81.20	69.00	136.00	110.00	93.00	16

Vehicles, as described in and subject to the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted)	FROM POINTS ON WP IN CALIFORNIA			Route (See Section 3)
		Decoto, Melrose (Oakland), Milpitas, San Jose			
		Column A	Column B	Column C	
550	Bend.....Ore.	$73.00	$59.90	$52.50	26F
	‡Kennewick.....	90.00	73.20	62.30	(1)18 or (1)20
	‡Pasco.....	90.00	73.20	62.30	(1)18, 19
	Renton.....	78.50	(3)64.00 (3)71.50	54.70	(1)18, 21, (1)22 or (1)23
	‡Spokane.....	116.00	94.00	79.70	(1)18, (1)20 or 24
	Vancouver.....	76.00	62.90	55.50	26-K
	‡Wenatchee.....	100.00	81.20	69.00	24

(Fm) Applies to points named only.

δ Applies only in connection with Routes, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 26-D, 26-E, 26-H, δ26-I or 26-J. (CJT-1535)

For explanation of other reference marks, see concluding page(s) of this Tariff.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

For Keys to route see Section 3.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on NP	FROM POINTS IN MONTANA (VIA ROUTE 28)															
		Billings				Butte				Glendive				Laurel			
		Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E
	Big Timbers	$33.53	$26.82	$22.35	$44.71	.....	.....	.....	.....	.....	.....	.....	.....	$29.59	$23.67	$19.73	$39.45
	Billings	17.95	14.36	11.97	23.93	.....	.....	.....	.....	$68.50	$54.80	$45.67	$91.33	17.95	14.36	11.97	23.93
	Bozeman	.....	.....	.....	.....	$36.95	$29.56	$24.63	$49.27	.....	.....	.....	.....	.....	.....	.....	.....
600	Butte	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....
	Circle	72.25	57.80	48.17	96.33	123.75	99.00	82.50	165.00	26.09	20.87	17.39	34.79	76.25	61.00	50.83	101.67
	Columbus	24.08	19.26	16.05	32.11	.....	.....	.....	.....	.....	.....	.....	.....	20.13	16.10	13.42	26.84
	Deer Lodge	.....	.....	.....	.....	22.93	18.34	15.29	30.57	.....	.....	.....	.....	.....	.....	.....	.....
	Forsyth	38.00	30.40	25.33	50.67	97.00	77.60	64.67	129.33	.....	.....	.....	.....	41.75	33.40	27.83	55.67
	Gardiner	55.25	44.20	36.83	73.67	.....	.....	.....	.....	.....	.....	.....	.....	51.25	41.00	34.17	68.33
	Glendive	68.50	54.80	45.67	91.33	127.75	102.20	85.17	170.33	17.95	14.36	11.97	23.93	72.25	57.80	48.17	96.33
610	Helena	.....	.....	.....	.....	29.33	23.46	19.55	39.11	.....	.....	.....	.....	.....	.....	.....	.....
	Hysham	32.21	25.77	21.47	42.95	90.50	72.40	60.33	120.67	.....	.....	.....	.....	36.41	29.13	24.27	48.55
	Laurel	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93
	Livingston	41.25	33.00	27.50	55.00	.....	.....	.....	.....	.....	.....	.....	.....	38.00	30.40	25.33	50.67
	Miles City	49.50	39.60	33.00	66.00	108.75	87.00	72.50	145.00	31.95	25.56	21.30	42.60	53.25	42.60	35.50	71.00
	Philipsburg	.....	.....	.....	.....	27.77	21.82	18.18	37.03	.....	.....	.....	.....	.....	.....	.....	.....
	Red Lodge	28.97	23.18	19.31	38.63	.....	.....	.....	.....	.....	.....	.....	.....	24.65	19.72	16.43	32.87
	Sidney	81.25	65.00	54.17	108.33	.....	.....	.....	.....	27.53	22.02	18.35	36.71	85.00	68.00	56.67	113.33
620	Terry	59.00	47.20	39.33	78.67	118.25	94.60	78.83	157.67	22.93	18.34	15.29	30.57	63.00	50.40	42.00	84.00
	Three Forks	.....	.....	.....	.....	29.25	23.40	19.50	39.00	.....	.....	.....	.....	.....	.....	.....	.....
	Townsend	.....	.....	.....	.....	36.41	29.13	24.27	48.55	.....	.....	.....	.....	58.25	46.60	38.83	77.67
	Wibaux	75.75	60.60	50.50	101.00	135.00	108.00	90.00	180.00	21.06	16.85	14.04	28.08	79.50	63.60	53.00	106.00

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on NP	FROM POINTS IN MONTANA (VIA ROUTE 28)															
		Livingston				Missoula				Miles City				Sidney			
		Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E
	Big Timbers	$22.06	$17.65	$14.71	$29.41	.....	.....	.....	.....	$70.00	$56.00	$46.67	$93.33	.....	.....	.....	.....
	Billings	41.25	33.00	27.50	55.00	.....	.....	.....	.....	49.50	39.60	33.00	66.00	.....	.....	.....	.....
	Bozeman	19.81	15.85	13.21	26.41	$65.75	$52.60	$43.83	$87.67	85.00	68.00	56.67	113.33	.....	.....	.....	.....
630	Butte	.....	.....	.....	.....	42.00	33.60	28.00	56.00	.....	.....	.....	.....	.....	.....	.....	.....
	Circle	95.50	76.40	63.67	127.33	.....	.....	.....	.....	42.25	33.80	28.17	56.33	$38.00	$30.40	$25.33	$50.67
	Columbus	31.69	25.35	21.13	42.25	.....	.....	.....	.....	59.75	47.80	39.83	79.67	.....	.....	.....	.....
	Deer Lodge	.....	.....	.....	.....	33.53	26.82	22.35	44.71	.....	.....	.....	.....	.....	.....	.....	.....
	Forsyth	67.00	53.60	44.67	89.33	.....	.....	.....	.....	25.23	20.18	16.82	33.64	55.50	44.40	37.00	74.00
	Gardiner	28.10	22.48	18.73	37.47	.....	.....	.....	.....	92.75	74.20	61.83	123.67	.....	.....	.....	.....
	Glendive	97.75	78.20	65.17	130.33	.....	.....	.....	.....	31.95	25.56	21.30	42.60	27.53	22.02	18.35	36.71
640	Hamilton	.....	.....	.....	.....	25.51	20.41	17.01	34.01	.....	.....	.....	.....	.....	.....	.....	.....
	Helena	.....	.....	.....	.....	41.00	32.80	27.33	54.67	.....	.....	.....	.....	.....	.....	.....	.....
	Hysham	60.50	48.40	40.33	80.67	.....	.....	.....	.....	30.90	24.72	20.60	41.20	.....	.....	.....	.....
	Laurel	38.00	30.40	25.33	50.67	.....	.....	.....	.....	53.25	42.60	35.50	71.00	.....	.....	.....	.....
	Livingston	17.95	14.36	11.97	23.93	.....	.....	.....	.....	78.75	63.00	52.50	105.00	.....	.....	.....	.....
	Miles City	78.75	63.00	52.50	105.00	.....	.....	.....	.....	17.95	14.36	11.97	23.93	43.75	35.00	29.17	58.33
	Missoula	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....
650	Philipsburg	.....	.....	.....	.....	32.21	25.77	21.47	42.95	.....	.....	.....	.....	.....	.....	.....	.....
	Polson	.....	.....	.....	.....	29.85	23.88	19.90	39.80	.....	.....	.....	.....	.....	.....	.....	.....
	Red Lodge	48.25	38.60	32.17	64.33	.....	.....	.....	.....	64.25	51.40	42.83	85.67	.....	.....	.....	.....
	Sidney	110.50	88.40	73.67	147.33	.....	.....	.....	.....	43.75	35.00	29.17	58.33	17.95	14.36	11.97	23.93
	Superior	.....	.....	.....	.....	28.97	23.18	19.31	38.63	.....	.....	.....	.....	.....	.....	.....	.....
	Terry	88.25	70.60	58.83	117.67	.....	.....	.....	.....	23.21	18.57	15.47	30.95	35.36	28.29	23.57	47.15
	Thompson Falls	.....	.....	.....	.....	38.00	30.40	25.33	50.67	.....	.....	.....	.....	.....	.....	.....	.....
660	Three Forks	28.10	22.48	18.73	37.47	58.00	46.40	38.67	77.33	92.75	74.20	61.83	123.67	.....	.....	.....	.....
	Townsend	.....	.....	.....	.....	49.25	39.40	32.83	65.67	.....	.....	.....	.....	.....	.....	.....	.....
	Wibaux	104.75	83.80	69.83	139.67	.....	.....	.....	.....	38.25	30.60	25.50	51.00	33.53	26.82	22.35	44.71

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on GN	FROM Billings, Mont.				FROM Butte, Mont.				FROM Glasgow, Mont.				FROM Great Falls, Mont.				ROUTE (See Section 3)
		Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	
		$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	
670	Billings	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	67.25	53.80	44.83	89.67	34
	Boulder	.....	.....	.....	.....	22.35	17.88	14.90	29.80	.....	.....	.....	.....	42.75	34.20	28.50	57.00	
	Browning	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	43.25	34.60	28.83	57.67	
	Butte	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	51.75	41.40	34.50	69.00	
	Chester	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	44.00	35.20	29.33	58.67	
680	Chinook	.....	.....	.....	.....	.....	.....	.....	.....	46.75	37.40	31.17	62.33	46.00	36.80	30.67	61.33	
	Choteau	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	26.95	21.56	17.97	35.93	
	Conrad	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	29.25	23.40	19.50	39.00	
	Cut Bank	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	39.50	31.60	26.33	52.67	
	Fort Benton	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23.79	19.03	15.86	31.72	
	Glasgow	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93	80.75	64.60	53.83	107.67	
690	Great Falls	67.25	53.80	44.83	89.67	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93	
	Havre	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	40.50	32.40	27.00	54.00	
	Helena	.....	.....	.....	.....	29.33	23.46	19.55	39.11	.....	.....	.....	.....	35.68	29.34	24.45	48.91	
	Laurel	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	71.00	56.80	47.33	94.67	
	Lewistown	44.25	35.40	29.50	59.00	.....	.....	.....	.....	.....	.....	.....	.....	39.00	31.20	26.00	52.00	
	Malta	.....	.....	.....	.....	.....	.....	.....	.....	30.64	24.51	20.43	40.85	63.00	50.40	42.00	84.00	
700	Plentywood	.....	.....	.....	.....	.....	.....	.....	.....	48.50	38.80	32.33	64.67	.....	.....	.....	.....	
	Poplar	.....	.....	.....	.....	.....	.....	.....	.....	30.64	24.51	20.43	40.85	.....	.....	.....	.....	
	Scobey	.....	.....	.....	.....	.....	.....	.....	.....	38.00	30.40	25.33	50.67	.....	.....	.....	.....	
	Shelby	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	34.31	27.45	22.87	45.75	
	Sidney	.....	.....	.....	.....	.....	.....	.....	.....	47.25	37.80	31.50	63.00	.....	.....	.....	.....	
	Stanford	55.50	44.40	37.00	74.00	.....	.....	.....	.....	.....	.....	.....	.....	29.25	23.40	19.50	39.00	
	Sweet Grass	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	42.25	33.80	28.17	56.33	
	Wolf Point	.....	.....	.....	.....	.....	.....	.....	.....	26.09	20.87	17.39	34.79	.....	.....	.....	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on GN	FROM Kalispell, Mont.				FROM Laurel, Mont.				FROM Sidney, Mont.				ROUTE (See Section 3)
		Col. A	Col. B	Col C	Col. E	Col. A	Col. B	Col. C	Col. E	Col. A	Col. B	Col. C	Col. E	
		$	$	$	$	$	$	$	$	$	$	$	$	
710	Billings	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	34
	Cut Bank	46.00	36.80	30.67	61.33	.....	.....	.....	.....	.....	.....	.....	.....	
	East Glacier Park	35.10	28.08	22.40	46.80	.....	.....	.....	.....	.....	.....	.....	.....	
	Eureka	29.33	23.46	19.55	39.11	.....	.....	.....	.....	.....	.....	.....	.....	
	Glasgow	.....	.....	.....	.....	.....	.....	.....	.....	47.25	37.80	31.50	63.00	
	Great Falls	.....	.....	.....	.....	71.00	56.80	47.33	94.67	.....	.....	.....	.....	
720	Kalispell	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	
	Laurel	.....	.....	.....	.....	17.95	14.36	11.97	23.93	.....	.....	.....	.....	
	Lewistown	.....	.....	.....	.....	48.00	38.40	32.00	64.00	.....	.....	.....	.....	
	Libby	35.36	28.29	23.57	47.15	.....	.....	.....	.....	.....	.....	.....	.....	
	Plentywood	.....	.....	.....	.....	.....	.....	.....	.....	34.05	27.24	22.70	45.40	
	Poplar	.....	.....	.....	.....	.....	.....	.....	.....	30.38	24.30	20.25	40.51	
	Scobey	.....	.....	.....	.....	.....	.....	.....	.....	43.50	34.80	29.00	58.00	
730	Shelby	52.00	41.60	34.67	69.33	.....	.....	.....	.....	.....	.....	.....	.....	
	Sidney	.....	.....	.....	.....	.....	.....	.....	.....	17.95	14.36	11.97	23.93	
	Stanford	.....	.....	.....	.....	55.50	44.40	37.00	74.00	.....	.....	.....	.....	
	Sweet Grass	60.75	48.60	40.50	81.00	.....	.....	.....	.....	.....	.....	.....	.....	
	West Glacier	21.38	17.10	14.25	28.51	.....	.....	.....	.....	.....	.....	.....	.....	
	White Fish	17.95	14.36	11.97	23.93	.....	.....	.....	.....	.....	.....	.....	.....	
	Wolf Point	.....	.....	.....	.....	.....	.....	.....	.....	36.15	28.92	24.10	48.20	

[I.C.C. 390]

445

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN OREGON on OT, UP	From Bend, Ore. Column A	Column B	Column C	Column E	Route (See Section 3)
800	Bend	$12.00	$ 9.60	$ 8.00	$16.00	30, 31
	Madras	24.08	19.26	16.05	32.11	
	Redmond	17.95	15.55	13.95	21.95	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on TS&D (JT-9607)	FROM ☒Kennewick, Wash. ☒Pasco, Wash. Column A	Column B	Column C	Column D	Column E	Route (see Section 3)
900	Lewiston.....Ida.	$44.00	$35.20	$29.34	$88.00	$58.67	
	Moscow..... "	52.25	41.80	34.83	104.50	69.67	
	Potlatch..... "	56.00	44.80	37.33	112.00	74.67	
910	Heppner.....Ore.	35.36	28.29	23.58	70.72	47.17	
	Hermiston..... "	23.50	18.80	15.70	47.00	31.33	
	Milton-Freewater.... "	28.67	22.93	19.11	57.34	38.23	
	Pendleton..... "	29.06	23.25	19.37	58.12	38.75	
	Pilot Rock..... "	35.10	28.08	23.40	70.20	46.80	
920	♦Bingen-White Salmon....	55.00	44.00	36.67	.....	73.33	
	Colfax.....	45.00	36.00	30.00	90.00	60.00	
	Dayton.....	28.54	26.83	19.04	57.08	38.05	
	♦Goldendale.....	43.00	34.40	28.67	.....	57.33	
	Grandview.....	24.36	19.48	15.74	48.72	32.48	
	Grange.....	29.33	23.45	19.55	58.66	39.11	
	Kennewick.....	12.00	9.60	8.00	24.00	16.00	
	♦Klickitat.....	55.00	44.00	36.67	.....	73.33	
	Lind.....	28.80	23.04	19.20	57.60	38.40	27
930	Moses Lake.....	38.00	30.50	16.03	76.00	50.67	
	Naches.....	41.88	33.50	27.92	83.76	55.84	
	Odessa.....	31.16	24.93	20.77	62.32	41.55	
	Othello.....	28.01	22.41	18.67	56.02	37.35	
	Palouse.....	56.00	44.80	37.33	112.00	74.67	
940	Pasco.....	12.00	9.60	8.00	24.00	16.00	
	Pomeroy.....	37.20	29.76	24.80	74.40	49.60	
	Prosser.....	22.06	17.65	14.71	44.12	29.41	
	Pullman.....	52.25	41.80	34.83	104.50	69.67	
	Richland.....	17.95	14.36	13.95	35.90	23.93	
	Ritzville.....	33.26	26.61	22.17	66.52	44.35	
950	Sunnyside.....	26.37	21.09	17.58	52.74	35.16	
	Toppenish.....	31.16	24.93	20.77	62.32	41.55	
	Walla Walla.....	25.80	20.64	17.20	51.60	34.40	
	Wapato.....	32.21	25.77	21.47	64.42	42.95	
	Washtucna.....	29.32	23.46	19.55	58.64	39.09	
	Yakima.....	34.05	27.24	22.70	68.10	45.40	

For explanation of reference marks, see concluding page(s) of this Tariff.

[fol. 590a]

446

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9607)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Aberdeen	$37.20	$29.76	$24.80	$74.40	$49.60	
	Almira	67.00	53.60	.....	.....	89.33	
	Anacortes	39.38	31.50	23.92	78.76	52.51	
1000	Arlington	29.25	23.40	19.50	58.50	39.00	
	Auburn	17.95	14.36	11.96	35.90	23.93	
	Bellevue	17.95	14.36	11.96	35.90	23.93	
	Bellingham	37.98	30.98	25.32	75.96	50.64	
	Bothell	18.87	15.09	12.58	37.74	25.16	
	Bremerton	28.10	22.48	18.73	56.20	37.47	
	Brewster	63.50	50.80	.....	.....	84.67	
	♦Camas	57.50	46.00	.....	.....	76.67	
	Cashmere	45.50	36.40	.....	.....	60.67	
	Castle Rock	38.00	30.40	.....	.....	50.67	
	Centralia	32.00	25.60	.....	.....	42.67	
1010	Chehalis	34.31	27.45	.....	.....	45.75	
	Chelan	57.25	45.80	.....	.....	76.33	
	Cheney	80.00	64.00	.....	.....	106.66	
	Chewelah	98.25	78.60	.....	.....	131.00	
	Cle Elum	27.25	21.80	18.17	54.50	36.33	
	Colfax	84.75	67.80	.....	.....	113.00	
	Colville	100.50	80.40	.....	.....	134.00	
	Coulee City	62.00	49.60	.....	.....	82.67	
	Coupeville	♦40.50	♦32.40	24.51	73.52	49.01	
	Davenport	76.00	60.80	.....	.....	101.33	
	Dayton	84.25	67.40	.....	.....	112.33	
	Deer Park	90.00	72.00	.....	.....	120.00	
	Dishman	85.75	68.60	.....	.....	114.33	27
	East Stanwood	26.25	21.00	17.50	52.50	35.00	
1020	Eatonville	25.81	20.65	17.21	51.62	34.41	
	Edmonds	21.77	17.41	14.51	43.54	29.03	
	Ellensburg	38.75	31.00	25.83	77.50	51.67	
	Elma	31.68	25.34	21.12	63.36	42.24	
	Enumclaw	20.43	16.34	13.62	40.86	27.24	
	Ephrata	54.50	43.60	.....	.....	72.67	
	Everett	23.50	18.80	15.66	47.00	31.33	
	Ferndale	39.50	31.60	26.33	79.00	52.67	
	Friday Harbor	♦46.42	♦37.14	23.54	70.62	47.08	
	Gig Harbor	26.61	21.29	17.74	53.22	35.48	
1030	Goldendale	64.50	51.60	.....	.....	86.00	
	Grand Coulee	73.50	58.80	.....	.....	98.00	
	Grand View	59.00	47.20	.....	.....	78.66	
	Hoquiam	38.50	30.80	25.66	77.00	51.33	
	Issaquah	17.95	14.36	11.96	35.90	23.93	
	Kalama	45.50	36.40	.....	.....	60.67	
	Kelso	43.75	35.00	.....	.....	58.33	
	Kennewick	69.25	55.40	.....	.....	92.33	
	Kent	17.95	14.36	11.96	35.90	23.93	
	Kirkland	17.95	14.36	11.96	35.90	23.93	
	Klickitat	70.50	56.40	.....	.....	94.00	
1040	Leavenworth	42.50	34.00	.....	.....	56.67	
	Lind	66.25	53.00	.....	.....	88.33	
	Longview	44.50	35.60	.....	.....	59.33	
	Lynden	41.00	32.80	27.33	82.00	54.67	
	Marysville	24.94	19.95	16.63	49.88	33.25	
	Metaline Falls	108.00	86.40	.....	.....	144.00	
	Monroe	22.64	18.11	15.09	45.28	30.19	

◄ For explanation of reference marks, see concluding page(s) of this Tariff.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D (JT-9607)	FROM Renton, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
	Montesano	$34.31	$27.45	$22.88	$68.62	$45.75	
	Morton	32.47	25.98	21.94	64.94	47.15	
	Mt. Vernon	31.16	24.93	20.78	62.32	41.55	
	Moses Lake	56.25	45.00	.....	.....	75.00	
1050	Naches	32.75	26.20	.....	.....	43.66	
	Newport	96.00	76.80	.....	.....	128.00	
	North Bend	21.06	16.85	14.04	42.12	28.08	
	Oak Harbor	39.75	31.80	26.50	79.50	53.00	
	Odessa	66.75	53.40	.....	.....	89.00	
	Okanogan	69.75	55.80	.....	.....	93.00	
	Olympia	25.80	20.64	17.20	51.60	34.40	
	Omak	70.75	56.60	.....	.....	94.33	
	Oroville	68.75	55.00	.....	.....	91.67	
	Othello	65.25	52.20	.....	.....	87.00	
	Palouse	89.00	71.20	.....	.....	118.66	
1060	Pasco	69.25	55.40	.....	.....	92.33	
	Pomeroy	90.00	72.00	.....	.....	120.00	
	Port Angeles	27.46	21.97	18.30	54.92	36.61	
	Port Orchard	27.98	22.38	18.65	55.96	37.31	
	Port Townsend	25.46	20.37	16.97	50.92	33.95	
	Poulsbo	33.33	26.66	22.22	66.66	44.44	
	Prosser	48.25	38.60	.....	.....	64.33	
	Pullman	86.25	69.00	.....	.....	115.00	
	Puyallup	18.25	14.60	12.17	36.50	24.33	
	Quincy	51.75	41.40	.....	.....	69.00	
	Raymond	42.25	33.80	28.16	84.50	56.33	
	Renton	14.50	11.60	9.66	29.00	19.33	
	Republic	87.25	69.80	.....	.....	116.33	
	Richland	68.00	54.40	.....	.....	90.66	27
1070	Ritzville	67.50	54.00	.....	.....	90.00	
	Rockford	90.25	72.20	.....	.....	120.33	
	Rosalia	86.75	69.40	.....	.....	115.67	
	Seattle	14.50	11.60	9.66	29.00	19.33	
	Sedro Woolley	◊34.05	◊27.24	16.03	48.10	32.07	
	Shelton	30.11	24.09	20.08	60.22	40.15	
	Snohomish	21.06	18.65	14.04	42.12	28.08	
	Snoqualmie	20.75	16.60	13.95	41.50	28.66	
	Spokane	84.25	67.40	.....	.....	112.33	
	Sprague	73.75	59.00	.....	.....	98.33	
	Stevenson	64.50	51.60	.....	.....	86.00	
1080	Sumner	18.56	14.85	12.37	37.12	24.75	
	Sunnyside	56.75	45.40	.....	.....	75.66	
	Tacoma	18.61	14.89	12.41	37.22	24.81	
	Tonasket	77.00	61.60	.....	.....	102.67	
	Toppenish	52.00	41.60	.....	.....	69.33	
	◊Twisp	72.50	58.00	.....	.....	96.67	
	Vancouver	53.25	42.60	.....	.....	71.00	
	Walla Walla	80.25	64.24	.....	.....	107.07	
	Wapato	50.50	40.40	.....	.....	67.33	
	Washtucna	85.25	68.20	.....	.....	113.66	
	Waterville	55.50	44.40	.....	.....	74.00	
	Wenatchee	48.50	38.80	.....	.....	64.67	
1090	Wenlock	38.00	30.40	.....	.....	50.67	
	White Salmon	65.00	52.00	.....	.....	86.67	
	Winslow	38.33	30.66	25.55	76.66	51.11	
	Woodlawn	48.00	38.40	.....	.....	64.00	
	Woshongal	58.25	46.60	.....	.....	77.67	
	Yakima	47.75	38.20	.....	.....	63.66	

For explanation of reference marks, see concluding page(s) of this Tariff.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on TS&D	FROM ⊠Spokane, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
1100	Bonners Ferry.....Ida.	$40.25	$32.20	$26.83	$80.50	$53.67	27
	Couer d'Alene..... "	21.49	17.19	14.33	42.98	28.65	
	Kellogg..... "	31.69	25.35	21.13	63.38	42.25	
	Priest River..... "	27.52	22.01	18.35	55.04	36.69	
	St. Maries..... "	35.34	28.27	23.56	70.68	47.12	
1110	Sand Point.....Ida.	31.95	25.56	21.30	63.90	42.60	
	Wallace..... "	34.57	27.66	23.05	69.14	46.09	
1120	Almira.....	32.47	25.98	21.65	64.94	43.29	
	Cheney.....	17.95	14.36	11.97	35.90	23.93	
	Chewelah.....	28.10	22.48	18.73	56.20	37.47	
	Colville.....	32.47	25.98	21.65	64.94	43.29	
	Davenport.....	22.64	18.11	15.09	45.28	30.19	
1130	Deer Park.....	19.19	15.35	12.79	38.38	25.59	
	Dishman.....	12.00	9.60	8.00	24.00	16.00	
	Fairfield.....	22.35	17.88	14.80	44.70	29.80	
	Ione.....	34.05	27.24	22.70	68.10	45.40	
	Metaline Falls.....	36.94	27.97	23.31	73.88	49.25	
	Newport.....	25.51	20.41	17.01	51.02	34.01	
	Republic.....	45.75	36.60	30.50	91.50	61.00	
	Rockford.....	19.19	15.35	12.79	38.38	25.59	
1140	Rosalia.....	20.91	16.73	13.94	41.82	27.88	
	Spokane.....	12.00	9.60	8.00	24.00	16.00	
	Sprague.....	24.36	19.49	16.24	48.72	32.48	
	Tekoa.....	25.22	20.18	16.82	50.44	33.63	
	Wilbur.....	21.06	16.85	14.04	42.12	28.08	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C, D or E rates.

Item	TO POINTS IN WASHINGTON on TS&D	FROM ⊠Wenatchee, Wash.					Route (see Section 3)
		Column A	Column B	Column C	Column D	Column E	
1150	Brewster.....	$31.55	$25.24	$21.03	$63.10	$42.07	27
	Cashmere.....	17.95	14.36	11.97	35.90	23.93	
	Chelan.....	24.36	19.49	16.24	48.72	32.48	
	Coulee City.....	30.64	24.51	20.44	61.28	40.85	
	Douglas.....	21.33	17.10	14.25	42.76	28.51	
	Ephrata.....	26.09	20.87	17.39	52.18	34.79	
1160	Grand Coulee.....	37.25	29.80	24.83	74.50	49.67	
	Leavenworth.....	19.81	15.85	13.21	39.62	26.41	
	Okanogan.....	36.41	29.13	24.41	72.82	48.55	
	Omak.....	37.46	29.97	24.98	74.92	49.95	
	Oroville.....	46.75	37.40	31.17	93.50	62.33	
1170	Quincy.....	21.20	16.96	14.13	42.40	28.27	
	Tonasket.....	42.50	34.00	28.33	85.00	56.67	
	Twisp.....	36.15	28.92	24.10	72.30	48.20	
	Waterville.....	20.44	16.35	13.63	40.88	27.25	
	Wenatchee.....	12.00	9.60	8.00	24.00	16.00	

For explanation of reference marks, see concluding page(s) of this Tariff.

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on CamP, NP, WWV	FROM Kennewick, Wash. Pasco, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1200	Craigmont.....Ida.	$59.75	$47.80	$39.83	$79.66	35
	Grangeville..... "	67.50	54.00	45.00	90.00	35
	Lewiston..... "	44.00	35.20	29.34	.....	35
	Moscow..... "	52.25	41.80	34.83	.....	28
	Orofino..... "	50.25	47.40	39.50	79.00	35
	Milton-Freewater.....Ore.	28.67	22.93	19.11	.....	29
	Pendleton..... "	29.06	23.25	19.37	.....	28
1210	Coulee City.....	52.00	41.60	34.67	69.33	28
	Dayton.....	28.54	26.83	19.04	.....	
	Grandview.....	24.36	19.48	15.74	.....	
	Kennewick.....	12.00	9.60	8.00	.....	
	Lind.....	28.80	23.04	19.20	.....	
	Naches.....	41.88	33.50	27.92	.....	
	Palouse.....	56.00	44.80	37.33	.....	
1220	Pasco.....	12.00	9.60	8.00	.....	28
	Prosser.....	22.06	17.65	14.71	.....	
	Pullman.....	52.25	41.80	34.83	.....	
	Richland.....	17.95	14.36	13.95	.....	
	Ritzville.....	33.26	26.61	22.17	.....	
1230	Sunnyside.....	26.37	21.09	17.58	.....	
	Toppenish.....	31.16	24.93	20.77	.....	
	Walla Walla.....	25.80	20.64	17.20	.....	
	Wapato.....	32.21	25.77	21.47	.....	
	Yakima.....	34.05	27.24	22.70	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) on NP	FROM Spokane, Wash.			Route (see Section 3)
		Column A	Column B	Column C	
1250	Coeur d'Alene.....Ida.	$21.40	$17.19	$14.33	28
	Sand Point..... "	31.95	25.56	21.30	
	Wallace..... "	34.57	27.66	23.05	

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON on NP	FROM Spokane, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1260	Almira	$32.47	$25.98	$21.95	$	28
	Cheney	17.95	14.36	11.97	.....	
	Coulee City	37.46	29.97	24.97	49.95	
	Davenport	22.64	18.11	15.09	.....	
	Rosalia	20.91	16.73	13.94	.....	
	Spokane	12.00	9.60	8.00	.....	
	Sprague	24.36	19.49	16.24	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on CamP and UP	FROM Kennewick, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
	Craigmont, Ida.	$59.75	$47.80	$39.83	$79.66	33
	Grangeville, Ida.	67.50	54.00	45.00	90.00	33
1270	Lewiston, Ida.	44.00	35.20	29.34	.....	33
	Moscow, Ida.	52.25	41.80	34.83	.....	33
	Orofino, Ida.	59.25	47.40	39.50	79.00	33
1280	Heppner, Ore.	35.36	28.29	23.58	.....	30
	Hermiston, "	23.50	18.80	15.70	.....	
	Milton-Freewater, "	28.67	22.93	19.11	.....	
	Pendleton, "	29.06	23.25	19.37	.....	
	Pilot Rock, "	35.10	28.08	23.40	.....	
1290	Colfax	45.00	36.00	30.00	.....	
	Dayton	28.54	26.83	19.04	.....	
	Grandview	24.36	19.48	15.74	.....	
	Kennewick	12.00	9.60	8.00	.....	
1300	Pomeroy	37.20	29.76	24.80	.....	
	Pullman	52.25	41.80	34.83	.....	
	Richland	17.95	14.36	13.95	.....	
1310	Sunnyside	26.37	21.09	17.58	.....	
	Walla Walla	25.80	20.64	17.20	.....	
	Washtucna	29.32	23.46	19.55	.....	
	Yakima	34.05	27.24	22.70	.....	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON (except as noted) on UP	FROM Spokane, Wash.			Route (see Section 3)
		Column A	Column B	Column C	
1230	Kellogg, Ida.	$31.69	$25.35	$21.13	30
	Wallace, "	34.57	27.66	23.05	
1280	Cheney	17.95	14.36	11.97	
	Dishman	12.00	9.60	8.00	
	Rockford	19.19	15.35	12.79	
	Spokane	12.00	9.60	8.00	
	Tekoa	25.22	20.18	16.82	

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B or C rates.

Item	TO POINTS IN WASHINGTON, (except as noted) on SI	FROM Spokane, Wash.			Route (see Section 3)
		Column A	Column B	Column C	
1380	Bonners Ferry.....Ida.	$40.25	$32.20	$26.83	36
	Coeur d'Alene..... "	21.49	17.19	14.33	
	Sand Point..... "	31.95	25.56	21.30	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN MONTANA on GN	FROM SPOKANE, WASH.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1400	Libby.....	$53.50	$42.80	$ 35.66	$71.33	34

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON, (except as noted) on GN	FROM Spokane, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1402	Bonners Ferry.....Ida.	$40.25	$32.20	$26.83	$53.67	34
	Coeur d'Alene..... "	21.49	17.19	14.33	28.65	
	Priest River..... "	27.52	22.01	18.35	36.69	
	Sand Point..... "	31.95	25.56	21.30	42.60	
1404	Chewelah.....	28.10	22.48	18.73	37.47	
	Colville.....	32.47	25.98	21.65	43.29	
1405	Deer Park.....	19.19	15.35	12.79	25.59	
	Dishman.....	12.00	9.60	8.00	16.00	
	Newport.....	25.51	20.41	17.01	34.01	
	Republic.....	45.75	36.60	30.50	61.00	
	Rosalia.....	20.91	16.73	13.94	27.88	
	Spokane.....	12.00	9.60	8.00	16.00	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON, on GN	FROM Wenatchee, Wash.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1406	Brewster.....	$31.55	$25.24	$21.03	$42.07	34
	Cashmere.....	17.95	14.36	11.97	23.93	
	Chelan.....	24.36	19.49	16.24	32.48	
	Douglas.....	21.38	17.10	14.25	28.51	
	Ephrata.....	26.09	20.87	17.39	34.79	
1407	Leavenworth.....	19.81	15.85	13.21	26.41	
	Okanogan.....	36.41	29.13	24.41	48.55	
	Omak.....	37.46	29.97	24.98	49.95	
	Oroville.....	46.75	37.40	31.17	62.33	
1408	Quincy.....	21.20	16.96	14.13	28.27	
	Tonasket.....	42.50	34.00	28.33	56.67	
	Wenatchee.....	12.00	9.60	8.00	16.00	

[fol. 593a]

SECTION 2—BASING RATES

Rates in Dollars and Cents per Vehicle.

Rates named in this Section are basing rates and may only be used as factors in arriving at through rates from points in California named in Section 1 to destinations named in this Section by adding the basing rates named in this Section to the proportional rates named in Section 1.

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN OREGON (except as noted) on UP	FROM VANCOUVER, WASH.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1410	Arlington	$46.75	$37.40	$31.17	$62.33	20
	Condon	56.25	45.00	37.50	75.00	
	Heppner	61.25	49.00	40.83	81.67	
	Hood River	30.11	24.09	20.07	40.14	
	Madras	31.50	25.20	21.00	42.00	
	Moro	47.50	38.00	31.63	63.33	
	Redmond	50.25	40.20	33.25	67.00	
	The Dalles	35.63	28.50	23.75	47.51	
	Vancouver, Wash.	12.00	9.60	8.00	16.00	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON on NP	FROM VANCOUVER, WASH.				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1420	Castle Rock	$26.66	$21.33	$17.77	$30.66	28
	Centralia	35.10	28.08	23.40	46.80	
	Chehalis	33.79	27.03	22.52	45.05	
	Kalama	22.35	17.88	14.80	29.80	
	Kelso	23.50	18.80	15.66	31.33	
	Longview	23.50	18.80	15.66	31.33	
	Ridgefield	18.56	17.95	13.95	24.33	
	Vancouver	12.00	9.60	8.00	16.00	
	Winlock	30.11	24.09	20.08	40.14	
	Woodland	18.56	17.95	13.95	24.33	

Vehicles, as described in, and subject to, the provisions of Item 400, taking Columns A, B, C or E rates.

Item	TO POINTS IN WASHINGTON (except as noted) on SP&S	FROM VANCOUVER, WASHINGTON				Route (see Section 3)
		Column A	Column B	Column C	Column E	
1430	Astoria, Ore.	$38.00	$30.40	$25.33	$50.66	32
	Clatskanie, "	29.25	23.40	19.50	39.00	
	Rainier, "	25.51	20.41	17.01	34.01	
	St. Helens, "	22.06	17.69	14.74	29.41	
	Seaside, "	42.50	34.00	28.66	56.66	
	Vernonia, "	35.89	28.71	23.92	47.85	
	Bingen-White Salmon	29.33	23.46	19.55	39.11	
	Camas	17.95	15.55	13.95	21.95	
	Goldendale	43.50	34.80	29.00	56.67	
	Klickitat	38.00	30.40	25.33	50.67	
	Stevenson	24.06	19.26	16.05	32.11	
	Vancouver	12.00	9.60	8.00	16.00	

Item	ROUTING INSTRUCTIONS
1500	(a) The rates named in this tariff apply only via the routes and junction points authorized in connection with individual rates or in this Section, except that when in the case of pronounced traffic congestion (not an embargo), washout, wreck, or other similar emergency, or through carriers' error, carriers forward shipments via other junction points of the same carriers or via the lines of other carriers parties to the Tariff, the rate will be that specified in this Tariff, but not higher than the rate applicable via the route of movement. Departure from the terms of the Amended Fourth Section of the Interstate Commerce Act is permitted by authority of ICC Fourth Section Order 10500, issued July 25, 1930. (b) The routes shown in this Section are those via which an agreed basis of divisions is in force and as shown are for northbound shipments. For southbound shipments, the northbound route will read in reverse. (c) Rates named in this Tariff From, To or Between stations on SP or for that portion of the haul over the lines of SP apply via routes provided in SP GFD Circular 199-G, ICC No. 1511, except: Rates named in this Tariff from South Gate (Los Angeles) or Raymer, Cal., apply via Saugus and Lancaster, Cal., or via Chatsworth or San Fernando and Salinas, Cal. (d) Except as otherwise provided, rates in this Tariff From, To or Between stations on the UP or for that portion of the haul over lines of UP apply via routes provided in UP Tariff 9069-A, ICC No. 5313. (e) Except as may be otherwise provided in connection with internal routing of GN, rates named From, To or Between stations or for that portion of the haul over GN will apply only as indicated in connection with routing.

Item	EXPLANATION OF ROUTE NUMBERS (Subject to Item 1500)	
	ROUTE	ROUTING IN CONNECTION WITH PROPORTIONAL RATES IN SECTION 1
1510		To Renton, Washington:
	1	SP, Portland, Ore., GN, Seattle or Black River, Wash., PC.
	2	SP, Portland, Ore., NP, Seattle or Black River, Wash., PC.
	3	SP, Portland, Ore., NP.
	4	SP, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Kennewick, Washington:
	5	SP, Portland, Ore., NP.
	6	SP, Portland, Ore., SP&S.
	7	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
	8	SP, Portland, Ore., UP.
		To Pasco, Washington:
	9	SP, Portland, Ore., NP.
	10	SP, Portland, Ore., SP&S.
		To Billings, Butte, Glasgow, Glendive, Great Falls, Kalispell, Laurel, Livingston, Miles City, Missoula, or Sidney, Montana, Spokane, Washington:
	11	SP, Portland, Ore., GN.
	12	SP, Portland, Ore., NP.
	13	SP, Portland, Ore., SP&S.
	13-A	SP, Portland, Ore., SP&S, Spokane, Wash., NP.
	13-B	SP, Portland, Ore., SP&S, Spokane, Wash, GN.
	14	SP, Portland, Ore., SP&S, Pasco, Wash., NP.
		To Spokane, Washington:
	15	SP, Portland, Ore., UP.
		To Wenatchee, Washington:
	16	SP, Portland, Ore., GN.
1520		To Kennewick, Pasco, Renton or Spokane, Wash.
	18	WP, Bieber, Cal., GN, Portland, Ore., NP.
		To Pasco, Wash.
	19	WP, Bieber, Cal., GN, Bend, Ore., OT, Wishram, Wash., SP&S.
		To Kennewick or Spokane, Wash.
	20	WP, Bieber, Cal., GN, Portland, Ore., UP.
		To Renton, Wash.
	21	WP, Bieber, Cal., GN, Seattle or Black River, Wash., PC.
		To Renton, Wash.
	22	WP, Bieber, Cal., GN, Portland, Ore., NP, Seattle or Black River, Wash., PC.
		To Renton, Wash.
	23	WP, Bieber, Cal., GN, Portland, Ore., UP, Seattle or Black River, Wash., PC.
		To Billings, Butte, Glasgow, Great Falls, Kalispell, Laurel or Sidney, Montana, Spokane or Wenatchee, Wash.
	24	WP, Bieber, Cal., GN.
1530		To Butte, Mont.
	25	SP, Ogden, Utah, UP.
	26	WP, Salt Lake City, Utah, UP.
	26-A	SP, Los Angeles, Cal., UP.
	26-B	SP, Wells, Nev., UP.
		To Bend, Ore.
	26-C	SP, Chemult, Ore., GN.
	26-D	SP, Portland, Ore., SP&S, Wishram, Wash., OT.
	26-E	SP, Portland, Ore., UP.
	26-F	WP, Bieber, Cal., GN
		To Vancouver, Wash.
	26-G	SP, Portland, Ore., GN
	26-H	SP, Portland, Ore., NP
	26-I	SP, Portland, Ore., SP&S.
	26-J	SP, Portland, Ore., UP.
	26-K	WP, Bieber, Cal., GN, Bend, Ore., OT, Wishram, Wash., SP&S.

EXPLANATION OF ROUTE NUMBERS (Subject to Item 1560)

Item	ROUTE	ROUTING IN CONNECTION WITH BASING RATES IN SECTION 2
1540	27	Transport Storage & Distributing Co. (M.C. 108121).
	28	NP direct.
	29	NP, Walla Walla, Wash., WWV.
	30	UP direct.
	31	OT direct.
1550	32	SP&S direct.
	33	UP, Riperia, Wash., CamP.
	34	GN direct.
	35	NP, Riperia, Wash., CamP.
	36	SI direct.

EXPLANATION OF ABBREVIATIONS

For explanation of carrier abbreviations, see page 2

Abbreviation	EXPLANATION
COD.....	Collect on Delivery.
GFD.....	General Freight Department.
ICC.....	Interstate Commerce Commission.
NPCFB.....	North Pacific Coast Freight Bureau, Agent.
PSFB.....	Pacific Southcoast Freight Bureau, Agent.

EXPLANATION OF REFERENCE MARKS

Reference Marks	EXPLANATION
↓	Reduction.
↑	Increase.
↑	In connection with shipments moving beyond, via Route 27, rates apply only on Automobiles, passenger, set-up.
S	Rates apply only on Automobiles, passenger, set-up.
①	Applies only from Decoto or Melrose (Oakland), Cal.
②	Maximum weight of each vehicle not to exceed 2,600 lbs.
③	Rate does not apply on shipments covered by rate prefixed ②.

ECONOMIC GROWTH

Population (000)	1940	1950	1960	% Increase 1940-1960	1970*	% Increase 1960-1970
United States	131,954	151,234	180,004	36%	205,246	14%
Pacific Coast	9,733	14,486	20,339	109	26,100	28
California	6,907	10,586	15,717	128	20,696	32
Oregon	1,090	1,521	1,769	62	2,153	22
Washington	1,736	2,379	2,853	64	3,251	14

*Stanford Research Institute, "Population Trends in the United States Through 1975", March, 1960

Value Added by Manufacturing (millions)	1940	1950	1958	% Increase 1940-1958
United States	$24,487	$74,426	$140,706	475%
Pacific Coast	1,548	5,544	15,260	886
California	1,123	3,995	11,913	961
Oregon	157	675	1,210	671
Washington	268	874	2,137	697

Farm Marketing Cash Receipts (millions)	1940	1950	1959	% Increase 1940-1959
United States	$8,382	$28,512	$33,459	301%
Pacific Coast	907	3,195	3,997	341
California	651	2,297	3,001	361
Oregon	112	390	429	283
Washington	144	508	567	294

Personal Income (millions)	1940	1950	1958	% Increase 1940-1958	1970*	% Increase 1958-1970
United States	$78,522	$225,473	$357,482	355%	$525,512	47%
Pacific Coast	7,668	26,064	46,230	503	75,958	64
California	5,839	19,627	36,692	528	62,931	72
Oregon	677	2,451	3,556	425	4,851	36
Washington	1,152	3,986	5,982	419	8,176	37

*Stanford Research Institute, "Income Trends in the United States Through 1975", December - 1957. Source gives projections in 1947 dollars. The projections shown here are in terms of 1959 dollars.

ECONOMIC GROWTH

Retail Sales (millions)	1939	1948	1958	% Increase 1939-1958
United States	$42,042	$128,849	$200,370	377%
Pacific Coast	4,299	14,740	25,505	493
California	3,188	10,950	19,948	526
Oregon	442	1,586	2,138	384
Washington	669	2,204	3,419	411

NOTES: All figures rounded, so totals may not add.
Sources: Population from U. S. Department of Commerce, Bureau of the Census, reports for the states and years indicated; Value Added by Manufacturing from Bureau of the Census reports; Farm Cash Receipts from U. S. Department of Agriculture, Marketing Service, "The Farm Income Situation"; Personal Income from U. S. Department of Commerce, Office of Business Economics, "Survey of Current Business", August, 1959; Retail Sales from Bureau of the Census, reports for years and states indicated.

BEST COPY AVAILABLE

PUBLISHER'S NOTICE

Material on the following frames is
the best copy available to publisher.

PRODUCTION

California Production as a Share of the United States

	1940	1950	1958
Value Added by Manufacturing	4.6%	5.4%	8.5%
Farm Cash Receipts	7.8	8.1	9.1*

*For 1959.

	1940	1950	1959	Percent Increase 1940-1959	Percent of Total U.S. in 1959
Lumber (million board feet)					
Oregon	5,202	8,520	7,546	45%	
Washington	4,542	3,814	3,456	-24	
TOTAL	9,744	12,334	11,002	13%	30%
Wood Pulp (000 tons)			(1958)		
Oregon	288	527	970	237%	
Washington	1,126	1,871	2,592	130	
TOTAL	1,414	2,398	3,562	152%	16%
Wheat (million bushels)					
Oregon	17.0	23.7	28.5	68%	
Washington	44.2	69.7	73.3	65	
TOTAL	61.2	93.4	101.8	66%	9%
Apples (000 tons)					
Oregon	76	70	53	-30%	
Washington	581	828	553	- 5	
TOTAL	657	898	606	- 8%	24%
Aluminum (000 tons)					
Oregon	-	7.6	139.0		
Washington	5.0	267.0	334.0		
TOTAL	5.0	274.6	473.0		24%

NOTES: Some figures rounded so totals may not add. Sources: Lumber production from U. S. Department of Commerce, Bureau of the Census, "Facts for Industry" and U. S. Department of Agriculture, "Lumber Production in the U. S., 1799-1946"; wood pulp from "Facts for Industry" series; wheat and apple production from U. S. Department of Agriculture, Marketing Service, "Annual Summaries - Crop Production"; aluminum production from Stanford Research Institute, Western Resources Handbook and U. S. Department of Interior, Bureau of Mines, "Minerals Yearbook".

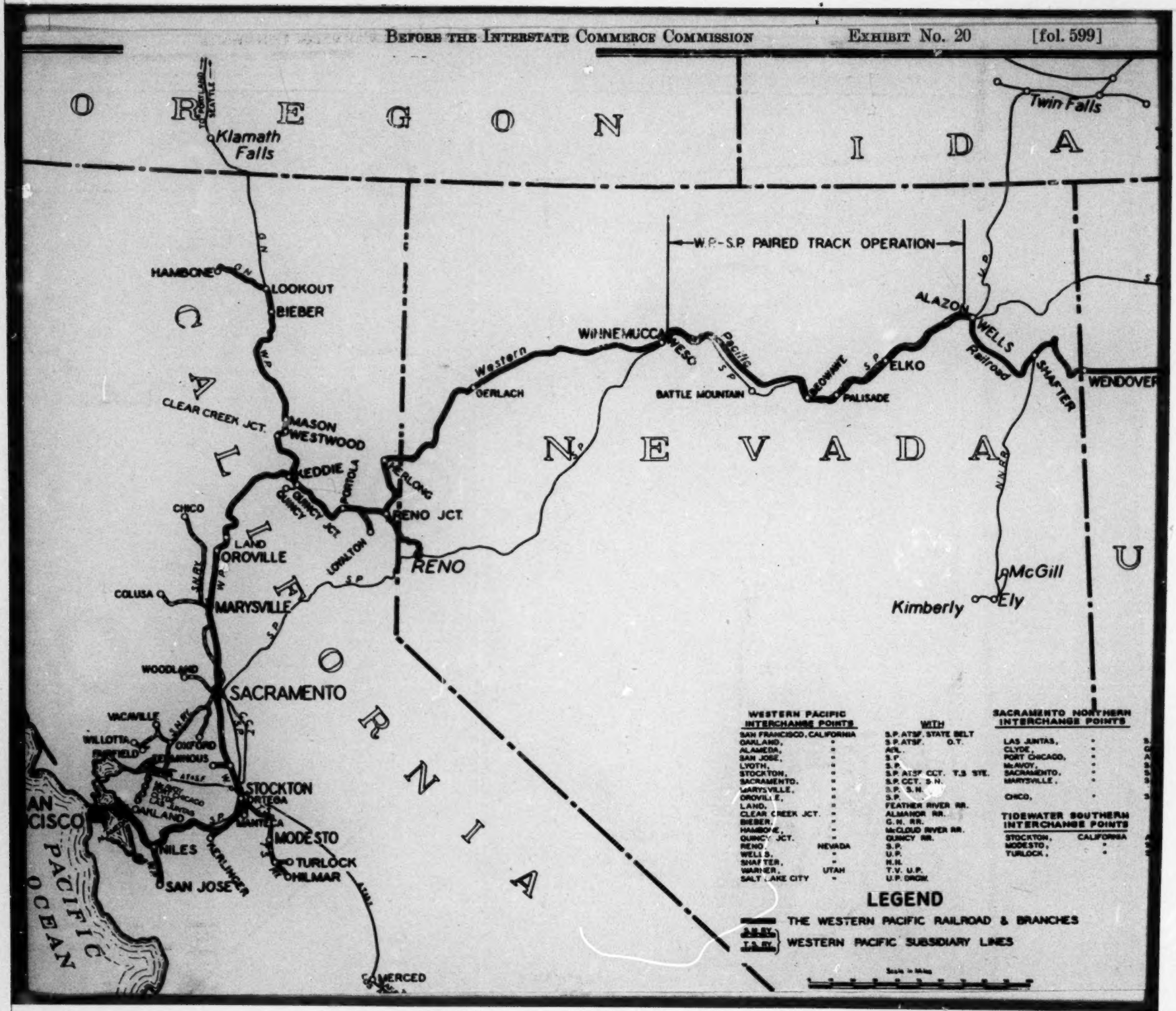
THE WESTERN PACIFIC TRANSPORTATION PLANT

Road Improvement	1950	1955	1960
Rail:			
% Track miles in rail 112 lb. or heavier	51%	67%	71%
% Track miles in rail 115 lb. or heavier	12	35	45
Ties:			
% Treated as a share of total	54	77	93
% Untreated as a share of total	46	23	7
	100	100	100
Ballast: Percent by type in mainlines:			
Slag	-	15	27
Crushed Rock	28	33	35
Other /1	72	52	38
	100	100	100
Bridges: Percent of total lineal feet by classification:			
Concrete	/1	3	4
Steel	48	47	49
Ballast Deck /2	-	8	19
Treated Timber	36	32	21
Untreated Timber	16	10	7
All Other	8	-	-
	100	100	100

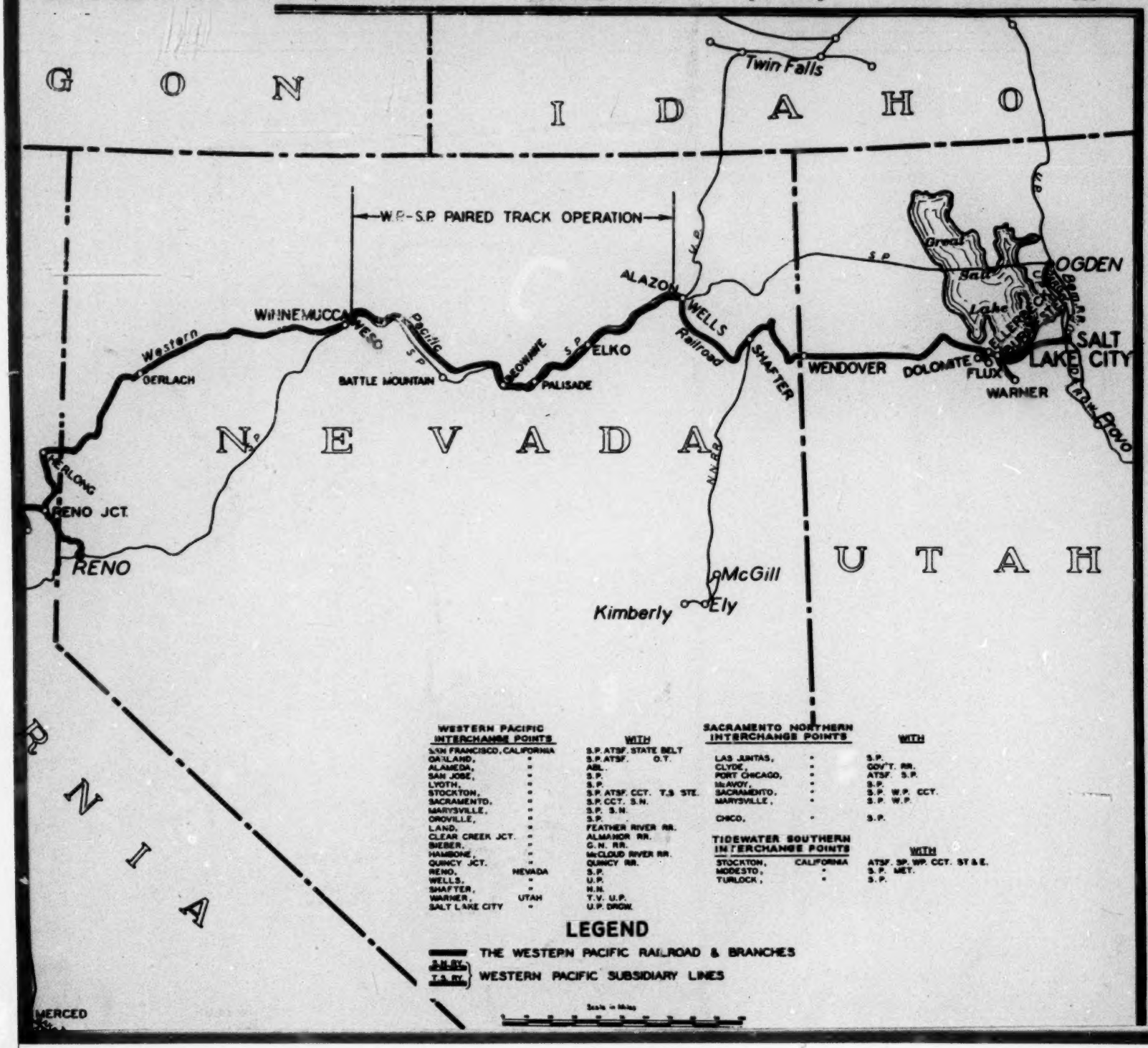
/1 Included in All Other
/2 Includes timber and concrete.

Equipment	1954	1957	1960	% Increase 1954-1960
Motive Power: 000 lbs. tractive effort	9,281	9,844	10,259	11%
Freight Car Fleet: Total Cars /1	4,951	5,384/2	6,056/2	22
Total Special Equipped	199	667	1,852	
Interior Equipped /3	78	401	1,159	
Other Equipped /4	121	266	693	
% of Total fleet special equipped	4%	12%	31%	

/1 - Excludes refrigerator cars owned but leased to other operators. Includes Sacramento Northern and Tidewater Southern fleets.
/2 - Includes leased cars in WP service (10 in 1957 and 30 in 1960.)
/3 - Includes DF, Compartmentizer, auto loader and transmission rack box cars.
/4 - Includes insulated box, multi-level auto flat, TOFC flat, auto and truck frame flat, bulkhead flat, steel coil gondola, woodchip gondola and hoppers and covered hoppers, including airslide.



OVERSIZE PAGE SEE NEXT FRAME
FOR REMAINDER OF PAGE



WESTERN PACIFIC INTERCHANGE POINTS		WITH
SAN FRANCISCO, CALIFORNIA		S.P. ATSF. STATE BELT
OAKLAND,	"	S.P. ATSF. O.T.
ALAMEDA,	"	ABL.
SAN JOSE,	"	S.P.
LYOTH,	"	S.P.
STOCKTON,	"	S.P. ATSF. CCT. T.S STE.
SACRAMENTO,	"	S.P. CCT. S.N.
MARYSVILLE,	"	S.P. S.N.
OROVILLE,	"	S.P.
LAND,	"	FEATHER RIVER RR.
CLEAR CREEK JCT.	"	ALMANOR RR.
SWEIER,	"	G. N. RR.
HAMBONE,	"	McCLOUD RIVER RR.
QUINCY JCT.	"	QUINCY RR.
RENO,	NEVADA	S.P.
WELLS,	"	U.P.
SHAFTER,	"	N.N.
WARNER,	UTAH	T.V. U.P.
SALT LAKE CITY	"	U.P. DROM

SACRAMENTO NORTHERN INTERCHANGE POINTS		WITH
LAS JUNTAS,	"	S.P.
CLYDE,	"	GOV'T. RR.
PORT CHICAGO,	"	ATSF. S.P.
McAVOY,	"	S.P.
SACRAMENTO,	"	S.P. W.P. CCT.
MARYSVILLE,	"	S.P. W.P.
CHICO,	"	S.P.

TIDEWATER SOUTHERN INTERCHANGE POINTS		WITH
STOCKTON,	CALIFORNIA	ATSF. SP. WP. CCT. ST & E.
MODESTO,	"	S.P. MET.
TURLOCK,	"	S.P.

LEGEND

THE WESTERN PACIFIC RAILROAD & BRANCHES

WESTERN PACIFIC SUBSIDIARY LINES

	Oakland-Stockton	Stockton-Oroville	Oroville-Portola	Keddie-Bieber	Section Totals	System Totals
1943-East	264,506,634	587,033,312	596,118,349	239,450,369	4,117,505,767	
-West	389,357,800	859,298,837	839,227,646	342,512,820		
Total	653,864,434	1,446,332,149	1,435,345,995	581,963,189		10,283,416,000
1944-East	268,970,567	572,564,266	566,439,016	234,048,876	4,285,518,383	
-West	462,312,838	931,653,312	923,129,082	326,800,426		
Total	730,883,405	1,504,217,578	1,489,568,098	560,849,302		10,519,239,000
1945-East	285,529,896	624,529,813	637,565,012	282,751,504	4,491,518,640	
-West	451,709,602	909,892,891	901,797,982	347,741,940		
Total	737,239,498	1,534,422,704	1,539,362,994	630,493,444		10,901,858,000
1946-East	206,217,240	517,189,900	527,224,778	242,787,112	3,339,265,069	
-West	280,362,560	640,220,101	610,396,703	314,866,675		
Total	486,579,800	1,157,410,001	1,137,621,481	557,653,787		7,757,214,000
1958-East	191,333,711	465,012,331	490,618,604	225,577,891	3,167,808,606	
-West	260,833,545	630,352,893	654,526,272	249,553,359		
Total	452,167,256	1,095,365,224	1,145,144,876	475,131,250		8,033,190,000
1959-East	208,693,224	480,081,333	505,987,775	233,005,969	3,274,711,434	
-West	286,863,243	638,848,571	657,073,767	274,157,552		
Total	495,556,467	1,118,929,904	1,163,061,542	507,163,521		8,240,744,000
1960-East	202,686,167	475,722,697	502,185,973	238,968,977	3,276,791,788	
-West	268,804,856	645,715,146	662,190,862	280,517,590		
Total	471,491,023	1,121,437,803	1,164,376,435	519,486,527		8,312,144,000

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 23

NORTHBOUND

Southern Pacific Schedules

	MCP (Daily)		Starpacer (Daily except Sun. & M	
Lv. Los Angeles	8:00 am	Day 1	12:01 am	Day 1
Ar. Portland	11:30 am	Day 3	6:30 am	Day 2

	NP	GN	UP	
Lv. Portland	3:30 pm	3:15 pm	3:00 pm	Day 3
Ar. Seattle	10:30 pm	10:00 pm	8:00 pm	Day 3

	SME (Daily)		PCE (Daily except Fri. Sun. & M	
Lv. Oakland	11:15 pm	Day 0	10:35 pm	Day 0
Ar. Portland	5:00 pm	Day 2	6:50 pm	Day 1

	NP	GN	UP	
Lv. Portland	10:30 pm	10:15 pm	8:30 pm	Day 1
Ar. Seattle	5:30 am	6:00 am	3:30 am	Day 2

INSIDE GATEWAY SCHEDULES

	SWG (Daily)		EXP - Mon., Tues. and Friday	
Lv. Los Angeles	3:00 am	Day 1	10:00 pm	Day 0
Ar. Vancouver	3:00 pm	Day 3	7:35 pm	Day 2
Ar. Portland	5:30 pm	Day 3	10:30 pm	Day 2
Ar. Seattle	10:00 pm	Day 3	1:30 am	Day 3

	SWG (Daily)		EXP - Tuesday, Wednesday and Sat	
Lv. Oakland	9:00 pm	Day 0	7:00 am	Day 1
Ar. Vancouver	3:00 pm	Day 2	7:35 pm	Day 2
Ar. Portland	5:30 pm	Day 2	10:30 pm	Day 2
Ar. Seattle	10:00 pm	Day 2	1:30 am	Day 3

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT NO. 24

SOUTHBOUND

Southern Pacific Schedules

	Adv. FML (Daily)						FML (Daily)	
	GN		UP		NP		GN	
Lv. Seattle	2:00 am	Day 1	11:00 pm	Day 0	1:00 am	Day 1	1:00 pm	Day 1
Lv. Portland	9:30 am	Day 1	5:30 am	Day 1	8:30 am	Day 1	7:30 pm	Day 1
Lv. Portland			5:00 pm	Day 1			5:00 am	Day 2
Lv. Oakland			8:45 pm	Day 2			4:45 pm	Day 3
Lv. Los Angeles			11:30 am	Day 3			4:00 pm	Day 4

Inside Gateway

	GWS (Daily)		CAL (Daily)	
Lv. Seattle	2:00 am	Day 1	1:00 pm	Day 1
Lv. Portland	5:00 am	Day 1	4:30 pm	Day 1
Lv. Vancouver	11:00 am	Day 1	8:00 pm	Day 1
Ar. Oakland	8:00 pm	Day 3	8:00 pm	Day 3
Ar. Los Angeles	1:00 pm	Day 4	1:00 pm	Day 4

COMPARISON BETWEEN LOWEST "THROUGH" RATE ON FIBREBOARD BOXES, KD FLAT FROM STOCKTON AND ANTIOCH, CALIF. TO SELECTED STATIONS IN WASHINGTON

- AND -

LOWEST "COMBINATION" RATE APPLICABLE VIA THE BIESER ROUTE

COLUMN	1	2	3	4	5	6
TO	LOWEST PRESENT "THROUGH" 1/ RATE		LOWEST "COMBINATION" RATE APPLICABLE VIA BIESER ROUTE (BASED ON 1/ RATE OF 60 CENTS, MINIMUM 50,000 POUNDS FROM ORIGIN TO PORTLAND, ORE.			
			RATE FROM PORTLAND, ORE. TO DESTINATION		"COMBINATION" RATE	
	RATE	MINIMUM WEIGHT (POUNDS)	RATE	MINIMUM WEIGHT (POUNDS)	RATE	MINIMUM WEIGHT (POUNDS)
BELLEVUE, WASH.	75	60,000	2/ 32½	50,000	101½	50,000
BREMERTON, "	85½	60,000	3/ 64½	30,000	129½	50,000
OLYMPIA, "	75	60,000	4/ 32½	50,000	101½	50,000
PROSSER, "	95	50,000	5/ 43½	50,000	112½	50,000
PULLMAN, "	105	50,000	6/ 48½	50,000	117½	50,000
RICHLAND, "	95	50,000	7/ 43½	50,000	112½	50,000
SHELTON, "	75	60,000	8/ 32½	50,000	101½	50,000
TOPPENISH, "	95	50,000	9/ 43½	50,000	112½	50,000
WALLA WALLA, "	101	45,000	10/ 43½	50,000	112½	50,000
YAKIMA, "	95	50,000	11/ 43½	50,000	112½	50,000

1/ ITEM 8840-J OF PACIFIC SOUTHCOAST FREIGHT BUREAU TARIFF 1-G, ICC No. 1352.

2/ ITEM 965
ITEM 920
ITEM 930
ITEM 1550
ITEM 1660
ITEM 1540
ITEM 915
OF NORTH PACIFIC COAST FREIGHT BUREAU FREIGHT TARIFF 60-B, ICC No. 1020

[fol. 607]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 28

NORTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

	STARPACER	NCP	OVE-RPS	PCE	VIW-NCP
v. Los Angeles	12:01A(1)	8:10A(1)	11:00P(0)		9:00P(0)
v. San Francisco					
v. Oakland			11:15P(0)	10:35P(0)	
r. Brooklyn	6:30A(2)	11:30A(3)	5:00P(2)	6:50P(1)	11:30A(3)
os Angeles to Brooklyn	30'30"	51'30"			62'30"
an Francisco to Brooklyn			42'00"		
akland to Brooklyn				20'15"	
v. Albina UP #681	2:15P(2)	UP #691 8:30P(3)	UP #691 8:30P(2)	UP #681 2:15P(2)	UP #691 8:30P(3)
r. Seattle UP #681	8:00P(2)	UP #691 3:30A(4)	UP #691 3:30A(3)	UP #681 8:00P(2)	UP #691 3:30A(4)
v. Albina UP #198-CBX	11:00P(2)	UP #198-CBX 11:00P(3)	UP #198-CBK 11:00P(2)	UP #198-CBK 11:00P(1)	UP #198-CBK 11:00P(3)
r. Spokane UP #298	8:00P(3)	UP #298 8:00P(4)	UP #298 8:00P(3)	UP #298 8:00P(2)	UP #298 8:00P(4)
r. Baker UP #IDS	8:00A(4)	UP #IDS 8:00A(5)	UP #IDS 8:00A(4)	UP #IDS 8:00A(3)	UP #IDS 8:00A(5)
os Angeles to Seattle	44'00"	67'30"			78'00"
an Francisco to Seattle			52'30"		
akland to Seattle			52'15"	45'25"	
os Angeles to Spokane	68'00"	84'00"			95'00"
an Francisco to Spokane			69'00"		
akland to Spokane			68'45"	45'25"	
os Angeles to Baker	80'00"	96'00"			107'00"
an Francisco to Baker			81'00"		
akland to Baker			80'45"	57'25"	

NORTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

	"Bieber" Route SWG		"Bieber" Route EXP		"Bieber" Route NCK	
	Direct	Via Portland Union Pacific	Direct	Via Portland Union Pacific	Direct	No Connection Portland
Lv. Los Angeles	3:00A(1)	3:00A(1)	10:00P(0)	10:00P(0)	5:30A(1)	
Lv. San Francisco	7:00P(1)	7:00P(1)	4:00A(1)	4:00A(1)	11:00P(1)	
Lv. Oakland	10:00P(1)	10:00P(1)	7:00A(1)	7:00A(1)	12:01A(2)	
Ar. Portland	5:30P(3)	5:30P(3)	10:30P(2)	10:30P(2)		
Los Angeles to Portland	62'30"	62'30"	48'30"	48'30"		
San Francisco to Portland	46'30"	46'30"	42'30"	42'30"		
Oakland to Portland	43'30"	43'30	39'30"	39'30"		
Lv. Albina		UP #681 2:15P(4)		UP #681 2:15P(3)		
Ar. Seattle	10:00P(3)	UP #681 8:00P(4)	1:30A(3)	UP #681 8:00P(4)		
Lv. Albina		UP #198* 11:00P(4)		UP #198* 11:00P(3)		
Ar. Spokane	10:00A(4)	UP #298 8:00P(5)	10:00A(3)	UP #298 8:00P(4)	10:00A(5)	
Ar. Baker		UP #IDS 8:00A(6)		UP #IDS 8:00A(5)		
Los Angeles to Seattle	67'00"	89'00"	51'30"	70'00"		
San Francisco to Seattle	51'00"	73'00"	45'30"	64'00"		
Oakland to Seattle	48'00"	70'00"	42'30"	61'00"		
Los Angeles to Spokane	79'00"	113'00"	60'00"	94'00"	100'30"	
San Francisco to Spokane	63'00"	97'00"	54'00"	88'00"	83'00"	
Oakland to Spokane	60'00"	94'00"	51'00"	85'00"	81'59"	
Los Angeles to Baker		125'00"		106'00"		
San Francisco to Baker		109'00"		100'00"		
Oakland to Baker		106'00"		97'00"		

* - CBK

SOUTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

	UNION PACIFIC		UNION PACIFIC		UNION PACIFIC		UNIC
	Drag And #151	#151	#690	#692	Drag And #151	#151	#690
Lv. Baker	6:00P(0)				6:00P(0)		
Ar. Albina	11:00P(1)				11:00P(1)		
Lv. Spokane		11:00P(0)				11:00P(0)	
Ar. Albina		11:00P(1)				11:00P(1)	
Lv. Seattle			11:00P(0)	4:00A(1)			11:00P
Ar. Albina			5:30A(1)	1:00P(1)			5:30A

SOUTHERN PACIFIC

	BAS	PNL	PCW	ADV. PNL	ADV. SNW-CS	TFC SFC	CAL	
Lv. Portland	5:00A(1)	5:00A(1)	8:50A(1)	5:00P(1)	5:00P(1)	12:01A(1)	4:30P(1)	
Ar. Oakland	4:45P(2)		5:05A(2)		8:45P(2)		8:00P(3)	
Ar. San Francisco	10:30P(2)				11:30P(2)			
Ar. Los Angeles		4:00P(3)		11:30A(3)		6:30A(2)	1:00P(4)	
ELAPSED TIME:								
Baker to Oakland	70'45"		59'05"		74'45"		74'00"	74'00"
Baker to San Francisco	76'30"				77'30"			
Baker to Los Angeles		94'00"		89'30"		60'30"	91'00"	91'00"
Spokane to Oakland	65'45"		54'05"		69'45"			
Spokane to San Francisco	71'30"				72'30"			
Spokane to Los Angeles		89'00"		84'30"		55'30"		
Seattle to Oakland			42'05"		45'45"			88'0
Seattle to San Francisco					48'30"			91'0
Seattle to Los Angeles				72'30"				113'0
Seattle to Oakland					40'20"			
Seattle to San Francisco					43'30"			
Seattle to Los Angeles				55'30"		50'30"		

OVERSIZE PAGE SEE NEXT FRAME
FOR REMAINDER OF PAGE

[fol. 609]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 29

470

SOUTHBOUND FREIGHT TRAIN SCHEDULES
SOUTHERN PACIFIC - UNION PACIFIC AND BIEBER ROUTE
AND ELAPSED TIMES

UNION PACIFIC		UNION PACIFIC		UNION PACIFIC		BIEBER ROUTE		BIEBER ROUTE	
#690	#692	Drag And #151	#151	#690	#692	CAL	GWS	SP-OCM	GN-GWS
		6:00P(0) 11:00P(1)							
			11:00P(0) 11:00P(1)					6:50A(1)	6:50A(1)
11:00P(0) 5:30A(1)	4:00A(1) 1:00P(1)			11:00P(0) 5:30A(1)	4:00A(1) 1:00P(1)	1:00P(0)	2:00A(1)		

C I F I C

CW	ADV. PNL	ADV. SPM-CS	TPC SPC	CAL	GWS				
0A(1) 5A(2)	5:00P(1)	5:00P(1) 8:45P(2) 11:30P(2)	12:01A(1)	4:30P(1) 8:00P(3)	5:00A(2) 3:00P(4) 6:00P(4) 4:00P(5)	4:00P(2) 7:00P(2) 1:00P(3)	3:00P(3) 6:00P(3) 4:00P(4)	8:00P(3) 9:00P(3) 4:00P(4)	3:00P(3) 6:00P(3) 4:00P(4)
	11:30A(3)		6:30A(2)	1:00P(4)					
05"		74'45" 77'30"		74'00"	74'00"				
	89'30"		60'30"	91'00"	91'00"				
05"		69'45" 72'30"						61'10" 62'10"	56'10" 59'10"
	84'30"		55'30"					81'10"	81'10"
05"		45'45" 48'30"			88'00" 91'00"	51'00" 54'00"	61'00" 64'00"		
	72'30"				113'00"	72'00"	86'00"		
		40'20" 43'30"							
	55'30"		50'30"						

[fol. 612]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 32

Exhibit Showing Comparison of Railroad Distance via Existing Joint Rate Routes with Route Sought in This Proceeding and also Routes Via Oregon Trunk-Spokane, Portland and Seattle Railway Companies between Representative Points on the Northern Pacific Railway Company and San Francisco and Los Angeles, California.

From	To	Via	Miles	Total
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Hoquiam, Wash.	NP	150	869
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Hoquiam, Wash.	NP	150	1038
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Hoquiam, Wash.	NP	140	1018
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Shelton, Wash.	NP	151	870
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Shelton, Wash.	NP	151	1039
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Shelton, Wash.	NP	141	1019
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Seattle, Wash.	NP	182	901
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Seattle, Wash.	NP	182	1070
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Seattle, Wash.	NP	172	1050
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Bremerton, Wash.	NP	187	906
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Bremerton, Wash.	NP	187	1075
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Bremerton, Wash.	NP	177	1055

From	To	Via	Miles	Total
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Everett, Wash.	NP	217	936
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Everett, Wash.	NP	217	1105
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Everett, Wash.	NP	207	1085
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Bellingham, Wash.	NP	291	1010
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Bellingham, Wash.	NP	291	1179
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Bellingham, Wash.	NP	281	1159
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Yakima, Wash.	NP	300	1019
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Yakima, Wash.	NP	88	1038
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Yakima, Wash.	NP	300	1188
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Yakima, Wash.	NP	88	995
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	NP	387	1106
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	950
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Pasco, Wash.	NP	387	1275

From	To	Via	Miles	Tot
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	9
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Walla Walla, Wash.	NP	451	11
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Walla Walla, Wash.	NP	64	10
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Walla Walla, Wash.	NP	451	13
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Walla Walla, Wash.	NP	64	9
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pendleton, Ore.	NP	443	11
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Pendleton, Ore.	NP	56	10
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Pendleton, Ore.	NP	443	13
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Pendleton, Ore.	NP	56	9
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Athena, Ore.	NP	435	11
San Francisco, Cal.	Portland, Ore.	SP	719	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Athena, Ore.	NP	48	9
San Francisco, Cal.	Bieber, Cal.	WP	394	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Athena, Ore.	NP	435	13

[fol 616]

From	To	Via	Miles	Total
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Athena, Ore.	NP	48	955
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Spokane, Wash.	NP	533	1252
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Spokane, Wash.	NP	146	1096
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Spokane, Wash.	NP	533	1421
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Spokane, Wash.	NP	146	1053
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Riparia, Wash.	NP	454	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1245
n Francisco, Cal.	Portland, Ore.	SP	719	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Riparia, Wash.	NP	67	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1089
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Riparia, Wash.	NP	454	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1414
n Francisco, Cal.	Bieber, Cal.	WP	394	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Riparia, Wash.	NP	67	
iparia, Wash.	Lewiston, Ida.	CamP.	72	1046

From	To	Via	Miles	Total
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Hoquiam, Wash.	NP	150	1242
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Hoquiam, Wash.	NP	150	1460
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Hoquiam, Wash.	NP	140	1440
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Shelton, Wash.	NP	151	1243
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Shelton, Wash.	NP	151	1461
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Shelton, Wash.	NP	141	1441
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Seattle, Wash.	NP	182	1274
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Seattle, Wash.	NP	182	1492
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Vancouver, Wash.	SR&S	96	
Vancouver, Wash.	Seattle, Wash.	NP	172	1476
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Bremerton, Wash.	NP	187	1279
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Bremerton, Wash.	NP	187	1497

From	To	Via	Miles	Total
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Vancouver, Wash.	SP&S	96	
ncouver, Wash.	Bremerton, Wash.	NP	177	1477
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Everett, Wash.	NP	217	1309
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Everett, Wash.	NP	217	1527
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Vancouver, Wash.	SP&S	96	
ncouver, Wash.	Everett, Wash.	NP	207	1507
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Bellingham, Wash.	NP	291	1383
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Bellingham, Wash.	NP	291	1601
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Vancouver, Wash.	SP&S	96	
ncouver, Wash.	Bellingham, Wash.	NP	281	1581
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Yakima, Wash.	NP	300	1392
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Yakima, Wash.	NP	88	1411
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
ockton, Cal.	Bieber, Cal.	WP	300	
eber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Yakima, Wash.	NP	300	1610

480
[fol. 619]

From	To	Via	Miles	Total
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Yakima, Wash.	NP	88	1417
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	NP	387	1479
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	SR&S	231	1323
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Pasco, Wash.	NP	387	1697
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	1329
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Walla Walla, Wash.	NP	451	1543
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Walla Walla, Wash.	NP	64	1387
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Portland, Ore.	GN	494	
Portland, Ore.	Walla Walla, Wash.	NP	451	1761
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516	
Stockton, Cal.	Bieber, Cal.	WP	300	
Bieber, Cal.	Bend, Ore.	GN	236	
Bend, Ore.	Wishram, Wash.	OT	152	
Wishram, Wash.	Pasco, Wash.	SR&S	125	
Pasco, Wash.	Walla Walla, Wash.	NP	64	1393
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pendleton, Ore.	NP	443	1535
Los Angeles, Cal.	Portland, Ore.	SP	1092	
Portland, Ore.	Pasco, Wash.	SR&S	231	
Pasco, Wash.	Pendleton, Ore.	NP	56	1379

[fol. 620]

From	To	Via	Miles	Total
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Pendleton, Ore.	NP	443	1753
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Pendleton, Ore.	NP	56	1385
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Athena, Ore.	NP	435	1527
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Athena, Ore.	NP	48	1371
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Athena, Ore.	NP	435	1745
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Athena, Ore.	NP	48	1377
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Spokane, Wash.	NP	533	1625
s Angeles, Cal.	Portland, Ore.	SP	1092	
rtland, Ore.	Pasco, Wash.	SP&S	231	
sco, Wash.	Spokane, Wash.	NP	146	1469
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Portland, Ore.	GN	494	
rtland, Ore.	Spokane, Wash.	NP	533	1843
s Angeles, Cal.	Stockton, Cal.	AT&SF	516	
tockton, Cal.	Bieber, Cal.	WP	300	
ieber, Cal.	Bend, Ore.	GN	236	
nd, Ore.	Wishram, Wash.	OT	152	
ishram, Wash.	Pasco, Wash.	SP&S	125	
sco, Wash.	Spokane, Wash.	NP	146	1475

Los Angeles, Cal.	Portland, Ore.	SP	1092
Portland, Ore.	Riparia, Wash.	NP	454
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72
Los Angeles, Cal.	Portland, Ore.	SP	1092
Portland, Ore.	Pasco, Wash.	SR&S	231
Pasco, Wash.	Riparia, Wash.	NP	67
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516
Stockton, Cal.	Bieber, Cal.	WP	300
Bieber, Cal.	Portland, Ore.	GN	496
Portland, Ore.	Riparia, Wash.	NP	454
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72
Los Angeles, Cal.	Stockton, Cal.	AT&SF	516
Stockton, Cal.	Bieber, Cal.	WP	300
Bieber, Cal.	Bend, Ore.	GN	236
Bend, Ore.	Wishram, Wash.	OT	152
Wishram, Wash.	Pasco, Wash.	SR&S	125
Pasco, Wash.	Riparia, Wash.	NP	67
Riparia, Wash.	Lewiston, Ida.	Cam.P.	72

Explanation of Abbreviations

AT&SF	Atchison, Topeka & Santa Fe Railway Company
Cal.	California
Cam.P.	Camas Prairie Railroad Company
GN	Great Northern Railway Company
Ida.	Idaho
NP	Northern Pacific Railway Company
Ore.	Oregon
OT	Oregon Trunk Railway Company
SP	Southern Pacific Company
SR&S	Spokane, Portland & Seattle Railway Company
Wash.	Washington
WP	Western Pacific Railroad Company

Distance Table Authority

AT&SF	9900-D	ICC 14399
Cam.P.	209-I	ICC F-232
GN	400-C	ICC A-6710
NP	1500-I	ICC 9759
OT	97-K	ICC 732
SP	420-D	ICC 4687
SR&S	685-K	ICC 732
WP	39-G	ICC 490

[fol. 622]

BEFORE THE INTERSTATE COMMERCE COMMISSION

EXHIBIT No. 33

TRANSPORTATION CONDITIONS
OF
SOUTHERN PACIFIC ROUTES
COMPARED WITH
WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA
BETWEEN
PORTLAND, OREGON
AND
STOCKTON, CALIFORNIA, SAN FRANCISCO, CALIFORNIA,
AND LOS ANGELES, CALIFORNIA

Sheet 1 of 17 sheets

SUMMARY OF TRANSPORTATION CONDITIONS
SOUTHERN PACIFIC ROUTES COMPARED WITH WESTERN PACIFIC - BIEBER ROUTE

Between Portland, Oregon and Stockton, California	Railroad	Number of Interchanges	Engine District	Road Miles	Total Degrees of Curvature	Feet of Rise	Total Equivalent Rise In Feet	Maximum Equivalent Rise in One Mile
Portland, Oregon to Stockton, California	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
SP Route via Roseville, California	SP	1	7	702	33,407	7,294	16,831	112
WP Route via Bieber, California	GN-WP	2	7	788	44,212	7,949	19,123	112
Stockton, California to Portland, Oregon								
SP Route via Roseville, California	SP	1	7	702	33,404	7,334	17,131	131
WP Route via Bieber, California	WP-GN	2	7	788	44,212	7,891	19,083	133
Between Portland, Oregon and San Francisco, California								
Portland, Oregon to San Francisco, California								
SP Route via Roseville, California - Stockton, California	SP	1	8	801	38,031	8,126	18,961	112
SP Route via Davis, Calif.-Oakland, Calif.	SP	1	7 + Truck	732	34,495	7,400	17,257	112
WP Route via Bieber, Calif. (WP Termination)	GN-WP	2	8 + Barge	880	47,094	8,793	21,038	112
WP Route via Bieber, Calif. (ATSF Term.)	GN-WP-ATSF	3	8 + Barge	866	45,933	8,406	20,541	112
San Francisco, Cal. to Portland, Oregon								
SP Route via Stockton, Cal. - Roseville, Cal.	SP	1	8	801	38,028	8,165	19,381	131
SP Route via Oakland, Cal. - Davis, Calif.	SP	1	7 + Truck	732	34,425	7,449	17,557	131
WP Route via Bieber, Cal. (WP Origination)	WP-GN	2	8 + Barge	880	47,094	8,753	21,121	133
WP Route via Bieber, Cal. (ATSF Orig.)	ATSF-WP-GN	3	8 + Barge	866	45,933	8,367	20,539	133
Between Portland, Oregon and Los Angeles, Calif.								
Portland, Oregon to Los Angeles, California								
SP Route via Roseville, Cal. - Stockton, Cal.	SP	1	9	1,098	47,616	12,843	27,903	145
WP Route via Bieber, California	GN-WP-ATSF	3	12	1,317	58,722	14,542	32,902	145

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO STOCKTON, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA

	From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1.	Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2.	Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3.	Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4.	Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,683	1,061	2,377	69
5.	Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6.	Gerber, California	Roseville, California	SP	-	1	107	811	267	1,757	38
7.	Roseville, California	Stockton, California	SP	-	1 1/	61	306	82	928	25
8.	Total - Portland - Stockton			1	7	702	33,407	7,294	16,831	112

SP - Southern Pacific

Note: 1/ - Engine District - Roseville, California to Tracy, California or Roseville, California to Fresno, California

Sheet 3 of 17 sheets

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO STOCKTON, CALIFORNIA

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,977	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,090	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1[1/]	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1[2/]	75	12,155	-	372	-
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Total - Portland - Stockton			2	7	788	44,212	7,949	19,123	112

GN - Great Northern; SPS - Spokane, Portland & Seattle; OT - Oregon Trunk

TRANSPORTATION CONDITIONS - STOCKTON, CALIFORNIA TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Stockton, California	Roseville, California	SP	-	1 1/	61	303	221	1,144	25
2. Roseville, California	Gerber, California	SP	-	1	107	811	349	1,902	34
3. Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
4. Dunsmuir, California	Klamath Falls, Oregon	SP	-	1	109	8,663	2,977	4,611	131
5. Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	66
6. Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
7. Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	909	49
8. Total - Stockton - Portland			1	7	702	33,404	7,334	17,131	131

Note: 1/ - Engine District - Fresno, California to Roseville, California or Tracy, California to Roseville, California

SP - Southern Pacific

TRANSPORTATION CONDITIONS - STOCKTON, CALIFORNIA TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
2. Oroville, California	Keddie, California	WP	-	1[1]	75	12,155	2,981	4,655	90
3. Keddie, California	Bieber, California	WP	1	1[2]	112	11,341	3,154	4,771	133
4. Bieber, California	Klamath Falls, Oregon	GN	-	1	91	526	473	1,696	57
5. Klamath Falls, Oregon	Bend, Oregon	GN	-	1	140	3,090	883	2,637	52
6. Bend, Oregon	Wishram, Washington	GN (OT)	-	1	152	12,774	117	1,582	43
7. Wishram, Washington	Portland, Oregon	GN (SPS)	1	1	106	3,850	16	1,743	25
8. Total - Stockton - Portland			2	7	788	44,212	7,891	19,083	133

WP - Western Pacific; GN - Great Northern; OT - Oregon Trunk; SPS - Spokane, Portland and Seattle

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO SAN FRANCISCO, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA - STOCKTON, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2. Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3. Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4. Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,683	1,061	2,377	69
5. Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6. Gerber, California	Roseville, California	SP	-	1	107	811	267	1,757	38
7. Roseville, California	Tracy, California	SP	-	1	81	426	135	1,295	31
8. Tracy, California	San Francisco, California	SP	-	1	79	4,506	779	1,761	82
9. Total - Portland - San Francisco			1	8	801	38,032	8,126	18,961	112

SP - Southern Pacific

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO SAN FRANCISCO, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA DAVIS, CALIFORNIA - OAKLAND, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2. Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3. Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4. Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,6[illegible]	1,061	2,377	69
5. Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6. Gerber, California	Davis, California	SP	-	1 1/	113	292	268	1,793	36
7. Davis, California	Oakland, California	SP	-	1 2/	74	1,913	187	1,318	39
8. Oakland, California	San Francisco, California	SP	-	Truck	11	-	-	-	-
9. Total - Portland - San Francisco			1	7 + Truck	732	34,495	7,400	17,257	112

SP - Southern Pacific

Notes: 1/ - Engine District - Gerber to Roseville, California via Davis

TRANSPORTATION CONDITIONS - PORTLAND, OREGON, TO SAN FRANCISCO, CALIFORNIA

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (WESTERN PACIFIC TERMINATION)

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,977	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,090	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1 1/	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1 2/	75	12,155	-	372	-
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Stockton, California	Oakland, California	WP	-	1	87	2,882	844	1,915	70
9. Oakland, California	San Francisco, California	WP	-	Barge	5	-	-	-	-
10. Total Portland - San Francisco			2	8 + Barge	880	47,094	8,793	21,038	112

GN - Great Northern; SPS - Spokane, Portland & Seattle; OT - Oregon Trunk; WP - Western Pacific

Notes: 1/ - Engine District - Bieber to Portola, California; 2/ - Engine District - Portola to Oroville.

Sheet 9 of 17 sheets

TRANSPORTATION CONDITIONS - PORTLAND, OREGON, TO SAN FRANCISCO, CALIFORNIA

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (SANTA FE TERMINATION)

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,977	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,090	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1 1/	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1 2/	75	12,155	-	372	--
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Stockton, California	Richmond, California	AT&SF	1	1	68	1,721	457	1,418	69
9. Richmond, California	San Francisco, California	AT&SF	-	Barge	10	-	-	-	-
10. Total Portland - San Francisco			3	8 + Barge	866	45,933	8,406	20,541	112

GN - Great Northern; SPS - Spokane, Portland & Seattle; OT - Oregon Trunk; WP - Western Pacific;

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA, TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA STOCKTON, CALIFORNIA - ROSEVILLE, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. San Francisco, California	Tracy, California	SP	-	1	79	4,504	818	1,947	77
2. Tracy, California	Roseville, California	SP	-	1	81	423	234	1,447	25
3. Roseville, California	Gerber, California	SP	-	1	107	811	349	1,902	34
4. Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
5. Dunsmuir, California	Klamath Falls Oregon	SP	-	1	109	8,683	2,977	4,611	131
6. Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	68
7. Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
8. Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	1,909	49
9. Total San Francisco - Portland			1	8	801	38,028	8,165	19,381	131

SP - Southern Pacific

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA OAKLAND, CALIFORNIA - DAVIS, CALIFORNIA

	From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1.	San Francisco, California	Oakland, California	SP	-	Truck	11	-	-	-	-
2.	Oakland, California	Davis, California	SP	-	1 1/	74	1,843	223	1,377	69
3.	Davis, California	Gerber, California	SP	-	1 2/	113	292	462	2,095	42
4.	Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
5.	Dunsmuir, California	Klamath Falls, Oregon	SP	-	1	109	8,683	2,977	4,611	131
6.	Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	68
7.	Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
8.	Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	1,909	49
9.	Total San Francisco - Portland			1	7 + Truck	732	34,425	7,449	17,557	131

SP - Southern Pacific

Notes: 1/ - Engine District - Oakland, California to Roseville, California

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (WESTERN PACIFIC ORIGINATION)

	From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1.	San Francisco, California	Oakland, California	WP	-	Barge	5	-	-	-	-
2.	Oakland, California	Stockton, California	WP	-	1	87	2,882	862	2,038	61
3.	Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
4.	Oroville, California	Keddie, California	WP	-	1 1/	75	12,155	2,981	4,655	90
5.	Keddie, California	Bieber, California	WP	1	1 2/	112	11,341	3,154	4,771	133
6.	Bieber, California	Klamath Falls, Oregon	GN	-	1	91	526	473	1,696	57
7.	Klamath Falls, Oregon	Bend, Oregon	GN	-	1	140	3,090	883	2,637	52
8.	Bend, Oregon	Wishram, Washington	GN (OT)	-	1	152	12,774	117	1,582	43
9.	Wishram, Washington	Portland, Oregon	GN (SPS)	1	1	106	3,830	16	1,741	25
10.	Total San Francisco - Portland			2	8 + Barge	880	47,094	8,753	21,121	133

WP - Western Pacific; GN - Great Northern; OT - Oregon Trunk; SPS - Spokane, Portland & Seattle

Note: 1/ - Engine District - Oroville to Portola; 2/ Engine District - Portola, California, to Bieber, California.

TRANSPORTATION CONDITIONS - SAN FRANCISCO, CALIFORNIA TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA (SANTA FE ORIGINATION)

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. San Francisco, California	Richmond, California	ATSF	-	Barge	10	-	-	-	-
2. Richmond, California	Stockton, California	ATSF	1	1	68	1,721	476	1,456	69
3. Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
4. Oroville, California	Keddie, California	WP	-	1 1/	75	12,155	2,981	4,655	90
5. Keddie, California	Bieber, California	WP	1	1 2/	112	11,341	3,154	4,771	133
6. Bieber, California	Klamath Falls, Oregon	GN	-	1	91	526	473	1,696	57
7. Klamath Falls, Oregon	Bend, Oregon	GN	-	1	140	3,090	883	2,637	52
8. Bend, Oregon	Wishram, Washington	GN (OT)	-	1	152	12,774	117	1,582	43
9. Wishram, Washington	Portland, Oregon	GN (SPS)	1	1	106	3,850	16	1,743	25
10. Total - San Francisco - Portland			3	8 + Barge	866	45,933	8,367	20,539	133

Notes: 1/ - Engine District - Oroville, California to Portola, California
2/ - Engine District - Portola, California to Bieber, California

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO LOS ANGELES, CALIFORNIA

SOUTHERN PACIFIC ROUTE VIA ROSEVILLE, CALIFORNIA - STOCKTON, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Eugene, Oregon	SP	1	1	121	2,369	774	2,566	74
2. Eugene, Oregon	Crescent Lake, Oregon	SP	-	1	98	10,130	4,438	6,333	112
3. Crescent Lake, Oregon	Klamath Falls, Oregon	SP	-	1	99	2,671	308	1,495	45
4. Klamath Falls, Oregon	Dunsmuir, California	SP	-	1	109	8,683	1,061	2,377	69
5. Dunsmuir, California	Gerber, California	SP	-	1	107	8,437	364	1,375	56
6. Gerber, California	Roseville, California	SP	-	1	107	811	267	1,757	38
7. Roseville, California	Fresno, California	SP	-	1	179	518	409	3,101	25
8. Fresno, California	Bakersfield, California	SP	-	1	111	134	329	1,953	36
9. Bakersfield, California	Los Angeles, California	SP	-	1	167	13,863	4,893	6,946	145
10. Total Portland - Los Angeles			1	9	1,098	47,616	12,843	27,903	145

SP - Southern Pacific

TRANSPORTATION CONDITIONS - PORTLAND, OREGON TO LOS ANGELES, CALIFORNIA

WESTERN PACIFIC VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Portland, Oregon	Wishram, Washington	GN (SPS)	1	1	106	3,850	153	1,577	41
2. Wishram, Washington	Bend, Oregon	GN (OT)	-	1	152	12,774	3,613	6,467	109
3. Bend, Oregon	Klamath Falls, Oregon	GN	-	1	140	3,096	1,352	3,278	86
4. Klamath Falls, Oregon	Bieber, California	GN	-	1	91	526	496	1,703	62
5. Bieber, California	Keddie, California	WP	1	1[1]	112	11,341	2,246	3,622	112
6. Keddie, California	Oroville, California	WP	-	1[2]	75	12,155	-	372	-
7. Oroville, California	Stockton, California	WP	-	1	112	476	89	1,704	29
8. Stockton, California	Calwa, California	ATSF	1	1	127	551	437	2,373	33
9. Calwa, California	Bakersfield, California	ATSF	-	1	107	389	224	1,853	30
10. Bakersfield, California	Barstow, California	ATSF	-	1	142	9,085	3,953	5,878	145
11. Barstow, California	San Bernardino, California	ATSF	-	1	82	2,971	1,748	2,802	100
12. San Bernardino, California	Los Angeles, California	ATSF	-	1	67	1,514	231	873	50
13. Total - Portland - Los Angeles			3	12	1,313	58,730	14,543	32,902	145

[41 638]

TRANSPORTATION CONDITIONS - LOS ANGELES, CALIFORNIA TO PORTLAND, OREGON

SOUTHERN PACIFIC ROUTE VIA STOCKTON, CALIFORNIA - ROSEVILLE, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine District (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise In Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Los Angeles, California	Bakersfield, California	SP	-	1	167	13,863	4,970	7,082	138
2. Bakersfield, California	Fresno, California	SP	-	1	111	134	203	1,741	35
3. Fresno, California	Roseville, California	SP	-	1	179	515	274	2,879	25
4. Roseville, California	Gerber, California	SP	-	1	107	811	349	1,902	34
5. Gerber, California	Dunsmuir, California	SP	-	1	107	8,437	2,353	4,166	83
6. Dunsmuir, California	Klamath Falls, Oregon	SP	-	1	109	8,683	2,977	4,611	131
7. Klamath Falls, Oregon	Crescent Lake, Oregon	SP	-	1	99	2,671	947	2,424	68
8. Crescent Lake, Oregon	Eugene, Oregon	SP	-	1	98	10,130	107	975	49
9. Eugene, Oregon	Portland, Oregon	SP	1	1	121	2,369	380	1,909	49
10. Total - Los Angeles, California - Portland, Oregon			1	9	1,098	47,613	12,560	27,689	138

SP - Southern Pacific

TRANSPORTATION CONDITIONS - LOS ANGELES, CALIFORNIA, TO PORTLAND, OREGON

WESTERN PACIFIC ROUTE VIA BIEBER, CALIFORNIA

From (a)	To (b)	Railroad (c)	Number of Interchanges (d)	Engine Districts (e)	Road Miles (f)	Total Degrees of Curvature (g)	Feet of Rise (h)	Total Equivalent Rise in Feet (i)	Maximum Equivalent Rise in One Mile (j)
1. Los Angeles California	San Bernardino California	ATSFP	-	1	67	1,514	1,123	2,118	69
2. San Bernardino, California	Barstow, California	ATSFP	-	1	82	2,971	2,789	3,648	176
3. Barstow, California	Bakersfield, California	ATSFP	-	1	142	9,085	2,243	3,906	138
4. Bakersfield, California	Calwa, California	ATSFP	-	1	107	389	115	1,670	28
5. Calwa California	Stockton, California	ATSFP	1	1	127	551	163	1,932	31
6. Stockton, California	Oroville, California	WP	-	1	112	476	267	1,999	37
7. Oroville, California	Keddie, California	WP	-	1 1/	75	12,155	2,981	4,655	90
8. Keddie, California	Bieber, California	WP	1	1 2/	112	11,341	3,154	4,771	133
9. Bieber, California	Klamath Falls, Oregon	CN	-	1	91	526	473	1,696	57
10. Klamath Falls, Oregon	Bend, Oregon	CN	-	1	140	3,090	883	2,637	52
11. Bend, Oregon	Wishram, Washington	CN (OT)	-	1	152	12,774	117	1,582	43
12. Wishram, Washington	Portland, Oregon	CN (SPS)	1	1	106	3,850	16	1,743	25
13. Total - Los Angeles - Portland			3	12	1,313	58,722	12,343	32,597	176

ATSFP - Santa Fe; WP - Western Pacific; CN - Great Northern; OT - Oregon Trunk; SPS - Spokane.

SOUTHERN PACIFIC SOUTHBOUND

	HAS (Daily)	377 PSS (Tues., Wed., Thurs., Fri. & Sat.)	PHL (Daily)	ADV SAM CS (Daily)	ADV. PHL (Daily)	IPC SPECIAL (Wed., Thur., and Sat.)
Lv. Portland	5:00AM[1]	8:50AM[1]	5:00AM[1]	5:00PM[0]	5:00PM[0]	12:01AM[1]
Ar. Oakland	4:45PM[2]	5:05AM[2]	-	8:45PM[2]	-	-
Ar. San Francisco	10:30PM[2]	-	-	11:30PM[2]	-	-
Ar. Los Angeles	-	-	4:00PM[3]	-	11:30AM[3]	6:30AM[2]
Elapsed Time - Portland to:						
Oakland	35'45"	20'15"	-	51'45"	-	-
San Francisco	41'30"	-	-	54'30"	-	-
Los Angeles	-	-	59'00"	-	66'30"	30'30"

WESTERN PACIFIC BIENNIAL ROUTE SOUTHBOUND

	CWS (Daily)	CAL (Daily)
Lv. Portland	5:00AM[1]	4:30PM[0]
Ar. Oakland	8:00PM[3]	8:00PM[2]
Ar. San Francisco	10:30PM[3]	10:30PM[2]
Ar. Los Angeles	1:00PM[4]	1:00PM[3]
Elapsed Time - Portland to:		
Oakland	63'00"	51'30"
San Francisco	65'30"	54'00"
Los Angeles	80'00"	68'30"

SOUTHERN PACIFIC NORTHBOUND

	375 STARLIGHTER (Tues., Wed., Thur., Fri.)	HCP (Daily)	YUM-HCP (Daily)	376 PCS Mon., Tues., Wed., And Thur.)	OWE or SHE KPS (Daily)
Lv. Los Angeles	12:01AM[1]	8:00AM[1]	9:00PM[0]	-	-
Lv. San Francisco	-	-	-	10:35PM[0]	11:00PM[0]
Lv. Oakland	-	-	-	6:50PM[1]	5:00PM[2]
Ar. Portland	6:30AM[2]	11:30AM[3]	11:30AM[3]	-	-
Elapsed Time - To Portland from:					
Los Angeles	30'30"	51'30"	62'30"	-	-
San Francisco	-	-	-	-	42'00"
Oakland	-	-	-	20'15"	41'45"

WESTERN PACIFIC BIENNIAL ROUTE NORTHBOUND

	SWG (Daily)	KEP (See Note)	NCK (Daily)
Lv. Los Angeles	3:00AM[1]	10:00PM[0]	-
Lv. San Francisco	7:00PM[0]	4:00AM[1]	4:00AM[1]
Lv. Oakland	10:00PM[0]	7:00AM[1]	7:00AM[1]
Ar. Portland	5:30PM[3-2]	10:30PM[2]	10:00AM[3]
Elapsed Time - To Portland from:			
Los Angeles	62'30"	48'30"	-
San Francisco	46'30"	42'30"	54'00"
Oakland	43'30"	39'30"	51'00"

Note - Departs Los Angeles - Mon., Tues., & Fri.
Departs Oakland - Tues., Wed., and Sat.

BEFORE THE INTERSTATE COMMERCE COMMISSION
EXHIBIT No. 35

GROSS TON MILES TRAILING

EAST, WEST AND TOTAL

GERBER - DUNSMUIR

1943	East	865,061,000
	West	1,117,606,000
	Total	1,982,667,000
1944	East	959,927,000
	West	1,228,572,000
	Total	2,188,499,000
1945	East	894,622,000
	West	1,088,807,000
	Total	1,983,429,000
1946	East	824,962,000
	West	1,129,434,000
	Total	1,954,396,000
1958	East	791,329,000
	West	848,732,000
	Total	1,640,061,000
1959	East	906,997,000
	West	1,034,480,000
	Total	1,941,477,000
1960	East	882,530,000
	West	1,001,879,000
	Total	1,884,409,000

[fol. 642]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

BRIEF OF COMPLAINANTS TO THE HEARING EXAMINER—
Dated and Served July 6, 1961

Due Date: July 10, 1961.

• • • • • • •

[fol. 643] F. Why Rates Were Not Sought Via Wishram:

Northern Pacific has attempted, in part, to justify its unlawful practices at the Portland Gateway by asserting that a more logical routing for "Inside Gateway" traffic to and from defendants' points east of the Cascades would be via Wishram. Surely, that defendant realizes that had an attempt been made to establish rates via that route on [fol. 644] traffic to or from points east of the Cascades, it would have vigorously asserted that relief should be confined to the point where the discrimination actually occurs, i.e., Portland.

As neither Northern Pacific nor Southern Pacific serve Wishram a Section 3(4) complaint would be difficult to sustain. This complaint attempts to terminate the unlawful practices against connecting carriers reaching a single gateway. A Section 1(4) complaint via Wishram would bring forth the claim that such rates via Wishram would short haul defendants.

• • • • • • •

[fol. 645] Requested Findings

It is respectfully requested that upon the record herein made, the Commission find substantially as follows:

1. Complainants and the lines constituting the "Inside Gateway" are connecting lines, as is Southern Pacific Com-

pany, with defendants Northern Pacific and Union Pacific at Portland, Oregon.

2. The conditions affecting the handling by defendants of traffic moved through the Portland Gateway are materially and substantially the same whether the traffic is moved to that gateway by Southern Pacific or the "Inside Gateway".

3. Defendants have practiced unlawful discrimination against complainants by failing and refusing to join with them and their connections in the establishment of joint through rail rates via Portland, Oregon, on the same level as have been established by those defendants with Southern Pacific Company, except in very limited cases.

4. That Southern Pacific Company is complainants' principal competitor and defendants' unlawful practices have caused complainants irreparable damage.

5. Defendants have failed to provide all reasonable, proper and equal facilities for the interchange of traffic between them and complainants, and have failed to make [fol. 646] the necessary and proper arrangements to assure that traffic received, forwarded or handled in connection with complainants is treated in essentially the same manner as traffic received, forwarded or handled in connection with Southern Pacific Company, with very limited exceptions, such as the movement of cast iron pipe.

6. Defendants' failures and refusals as aforesaid constitute violations of Section 3(4) Part I of the Interstate Commerce Act.

7. That such practices should be ordered to cease and desist upon the expiration of thirty (30) days from the effective date of an order of the Commission in this proceeding.

8. That such actions similarly result in a failure to provide reasonable routes, rates, facilities and services

all in further violation of Section 1(4) Part I Interstate Commerce Act.

9. That such reasonable routes, rates and facilities as will assure the "Inside Gateway" an opportunity to provide service upon the same level and under the same conditions as is now available to the Southern Pacific Company, should be ordered established upon the expiration of thirty (30) days from the effective date of an order of the Commission in this proceeding.

10. That this proceeding be kept open for the purpose [fol. 647] of allowing the parties, within a reasonable time, to establish just and reasonable divisions by mutual agreement, failing in which the proceeding shall be reopened for the limited purpose of the establishment of such just and reasonable divisions by the Commission.

11. Further, complainants request such other findings and orders as the Commission deems just, meet and necessary to eliminate the unlawful conditions herein complained of.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 647a] Certificate of Service (omitted in printing).

[fol. 648]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' REPLY TO EXCEPTIONS OF NORTHERN PACIFIC RAILWAY COMPANY, UNION PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY—Dated and Served October 6, 1961

* * * * * * *

[fol. 649] At no stage of the proceedings has it been the intention of complainants to show the existence of through routes since such a showing has hardly been necessary to sustain the relief sought. If defendants treated all com-[fol. 650] plainants' traffic the way they do the cast iron pipe (these rates were published after a shipper complaint was filed, but before it was heard), there would have been no need to file this complaint. The existence of through routes and rates on cast iron pipe does prove some very germane issues—primarily that important traffic does move without trouble over the Inside Gateway to and through Portland *in conjunction* with defendants. Whether or not this establishes the fact of through routes has not concerned complainants. We will not be led down a diversionary path away from the basic issues here pertinent. The issue is whether the principal competitor of complainants is being given unlawful favored treatment. It is answered affirmatively by the Examiner. The finding is amply supported in the record.

Reply to "Exception No. 2"

We surely agree with the cases cited as witness complainants' brief (p. 13 thereof). It is truly difficult to read into the language of *Atlantic Coast Line R. Co.* v. *U.S.* 284 U.S. 288 anything other than a positive finding that you need *not* physically connect with the discriminating line in order to qualify as a connecting line under the language of the statute.

The Supreme Court has in effect said that the lines which [fol. 651] are to be classified as "connecting lines" are not only those that have a direct physical connection with the defendant but *also include* those carriers making up a *through route which does connect with the defendant.* Surely there is no doubt that the Western Pacific is part of a through route (Santa Fe, Western Pacific, Great Northern) which through route *does* connect with Northern Pacific at Portland. Complainants do not believe that it

is necessary, or even proper, to speculate on the Supreme Court's intention regarding the terms employed, as the Court makes it manifestly clear that it intended no such restrictive interpretation as urged by defendants.

In discussing the purpose and design of the language employed and at issue in this case, the Court stated, in part:

> "In order to preserve, among other things, the existing *and possible* through routes via the Clinchfield on railroads other than the Atlantic Coast Line and the Louisville & Nashville the Commission, in authorizing the lease, made it subject to five conditions which the lessees accepted." (p. 291) (Emphasis ours).

It is in those conditions that the term "connecting lines" was used, and their definition was determined in connection with the objective outlined by the Court, namely, to preserve not only the then existing but also to preserve *possible* future through routes. That clear objective would be impossible under defendants' interpretation of connect-
[fol. 652] ing lines. The strained and unnatural interpretation urged by defendants is without merit and if adopted will render section 3(4) inoperative and unworkable except in the fewest possible circumstances.

* * * * * * *

[fol. 653] Secretary's certificate to following transcript (omitted in printing).

[fol. 654]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

Transcript of hearing—December 14, 1961

Hearing Room "B",
Interstate Commerce Commission,
Washington, D. C.

The above-entitled matter came on for oral argument before The Commission, by Division No. 2, at 10 o'clock a.m.

Present: Commissioners Freas (Presiding), Goff and Herring.

* * * * * * *

[fol. 655]

STATEMENT OF COMMISSIONER FREAS AND COLLOQUY WITH MR. TREANOR

Commr. Freas: In spite of the fact that there is a physical connection and that as you said, the cars would be handled that way, if the shipper should request it, I understand that you are not at least not emphatically contending that there is any through route today? What, in your opinion, constitutes or what determines whether there is a through route or not?

Mr. Treanor: I think basically the question of whether or not there is a through route would be wholly dependent upon the physical ability to handle the car and the stated willingness of the carriers involved at both ends to establish such a route and to handle the traffic in that manner.

I have not emphatically, as you say, Mr. Commissioner, contended there is a through route here because I don't think there are any through routes in existence today, except on the cast iron pipe and of course on livestock or the class rated commodities which are not moving any traffic.

[fol. 656] The cast iron pipe moves in substantial quantity. I don't know whether the fact that we have through routes well established on cast iron pipe, a substantial movement, a condition that has existed over ten years, would justify my saying to this Commission, "there definitely are in effect through routes for all purposes."

Commr. Freas: I lost myself in your argument. You say on the one hand the facilities are available, if a shipper for reasons of its own wanted to use them, the carriers stand ready and willing to transport the traffic, but still you say there are no through routes.

As I follow that, that would boil down then to the point of whether or not the carriers considered it through route and nothing more, is that right?

Mr. Treanor: I think it goes beyond that. I think there has to be a holding out to the public. There has to be a—

Commr. Freas: I understand there is a holding out if the public is willing to pay the combination rates.

Mr. Treanor: Certainly for my purposes, from the Western Pacific's, I would like to be able to say in all candor to you there are through rates and routes here.

* * * * * * *

[fol. 657] Commr. Freas: One further question on just what you are asking.

The Examiner in the opening paragraph of his recommended report says that you are alleging violations as a result of the failure of through routes and divisions.

According to your complaint, I believe you are asking for through routes, through rates and divisions in the event that they are not voluntarily disposed of between the parties. So the Examiner's statement is not quite complete, is it?

Mr. Treanor: No, sir, to that extent it would not be. I think he was trying to paraphrase it. We did not feel he had materially mis-stated anything there. We do ask that you keep this proceeding open in the event that we are unable to agree on divisions.

Of course, he should have added the fact that we were seeking the through rate which is the key.

Commr. Freas: The question of divisions is not reached now.

[fol. 658] Mr. Treanor: No, sir. I would like to make the point that we feel there is no service required of these defendants in connection with the traffic that they would take from the inside gateway that they won't have to perform in connection with the traffic that comes from the Southern Pacific. If there is any difference, any circuity at all involved in this proceeding, it is on the segment of route which comes up with Southern Pacific on the one hand versus the inside gateway on the other.

The inside gateway is slightly longer than the Southern Pacific route into Portland. North of Portland there is no difference in the distances that are involved.

• • • • • • •

[fol. 659]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2—Dated and Served August 27, 1962

Due Date: September 1, 1962

• • • • • • •

[fol. 660] Conclusion

• • • • • • •

1. Complainants and the lines constituting the "Inside Gateway" are connecting lines, as is Southern Pacific

Company, with defendants Northern Pacific and Union Pacific at Portland, Oregon.

2. The conditions affecting the handling by defendants of traffic moved through the Portland Gateway are materially and substantially the same whether the traffic is moved to that gateway by Southern Pacific or the "Inside Gateway".

3. Defendants have practiced unlawful discrimination against complainants by failing and refusing to join with them and their connections in the establishment of a general line of joint through rail rates via Portland, Oregon, on the same level as have been established by those defendants with Southern Pacific Company.

4. That Southern Pacific Company is complainants' principal competitor and defendants' unlawful practices have caused complainants irreparable damage.

5. Defendants have failed, except in limited circumstances, to provide all reasonable, proper and equal facilities for the interchange of traffic between them and complainants, and have failed to make the necessary and proper arrangements to assure that traffic received, forwarded, or handled in connection with complainants is treated in essentially the same manner as traffic re- [fol. 661] ceived, forwarded, or handled in connection with Southern Pacific Company.

6. Defendants' failures and refusals as aforesaid, constitute violations of Section 3 (4) Part I of the Interstate Commerce Act.

7. That such practices should be ordered to cease and desist upon the expiration of thirty (30) days from the effective date of an order of the Commission in this proceeding.

8. Further, complainants request such other findings and orders as the Commission deems just, meet and neces-

sary to eliminate the unlawful conditions herein complained of.

* * * * * * *

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 662] Certificate of Service (omitted in printing).

[fol. 666]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION FOR FURTHER HEARING FOR PURPOSE OF INTRODUCING NEWLY DEVELOPED EVIDENCE—December 28, 1962

Statement

This is a complaint proceeding. Oral Hearings were held May 8th through May 10, 1961 inclusive; Briefs were filed and the Examiner's Report and Recommended Order thereafter served. Subsequent to filing Exceptions and Replies, thereto, the parties were heard in Oral Argument [fol. 667] on December 14, 1961. The Report and Order of Division 2 reversing Hearing Examiner Wright was served August 2, 1962. Petition for Reconsideration by complainants has been filed and replied to and is presently pending before the Commission.

The Western Pacific, and its subsidiary lines, hereinafter referred to collectively as "complainant" herein requests Further Limited Hearing, under the modified procedure, for the purpose of introducing newly developed evidence as hereinafter described.

Evidence to Be Introduced

In the event the Commission should grant further hearing for the limited purpose of permitting the introduction of newly developed evidence, Petitioner would present the following:

1. That, subsequent to receipt of the Report and Order of Division 2 herein, Western Pacific launched a campaign to inform its interested shippers of the necessity of requesting, by formal application to the carriers' rate bureaus, the voluntary publication of rates via Bieber on a level competitive with Southern Pacific via Portland.

[fol. 668]

2. That, as of the date of the preparation of this Petition, fifty (50) individual such requests have actually been filed and docketed with the Pacific Southcoast Freight Bureau and the North Pacific Coast Freight Bureau; that an additional number of such requests have actually been filed but not yet docketed; that even more such requests are being prepared and that by the date of hearing, if such be granted, will have been either actually docketed or filed for docketing; that the above identified rate bureaus are the proper rate legislative bodies for such filings.

3. That, such formal requests are from all types of industries on the West Coast including the largest and some of the smallest; that rates have been requested upon all major commodities including, but not limited to, canned goods, iron and steel articles, lumber and lumber products, paper and paper articles, plaster, plaster board, gypsum, furniture, tin cans, rice, alfalfa, cotton seed, grain, feeds, flour, dried peas and [fol. 669] beans, dried fruits, butter, boats, scrap aluminum, Lignin liquor, acoustical materials and asphalt tile; that one request has been made on behalf of a traffic association that includes, within its member-

ship, approximately 150 individual shippers and others, yet this is counted as only one request.

4. That, the response to Petitioners' campaign to induce shippers to take affirmative action through the rate bureaus has been overwhelming and without precedent in the recallable history of such rate bureaus.

5. That, as of the date of preparing this Petition, the defendant lines have failed to take favorable action with regard to any of these docketed matters; that Petitioner expects to prove that such condition will be existing on the date of further hearing, if granted, no matter how far off such date may be.

6. That, the formal requests which have been made to the rate bureaus have been made in good faith and in response to the open invitation of the defendant [fol. 670] lines to, in the future, satisfy all legitimate and reasonable requests; that such requests as filed, are legitimate and reasonable and have been justified by the shippers.

This evidence will not be cumulative, and was not previously adduced because it was not in existence until now. In fact, until receipt of the Report and Order of Division 2 on the 2nd day of August 1962, it was the opinion of Petitioner that the question of whether the shippers had entered *formal* requests for competitive rates was immaterial to the issues in this proceeding, namely, whether the discriminatory practices of defendants were unlawful.

Argument in Support of Petition

Petitioner frankly states herein that it continues to adhere to the view that, under the allegation of discrimination in violation of Section 3 (4), the question of whether there have been any formal shipper requests for the publication of these rates is at least of questionable materiality. Apparently, this view was shared by Hearing Examiner

Wright in his Report and Recommended Order served herein. However, defendants continued to press this question in subsequent pleadings and in Oral Argument where [fol. 671] the Northern Pacific stated:

> "Our company, the Northern Pacific, has had only one request from a shipper in the last six years for the publication of joint rates via the routes here sought.
>
> This complaint has been satisfied and the testimony in this record is uncontroverted that we will satisfy all of such legitimate and reasonable requests brought in the future." (TR 500)

Apparently it was given some weight by the Commission, as indicated at Sheets 13 and 23 of the Report and Order of Division 2 herein.

This question, therefore, apparently played a material part in the ultimate conclusions set forth therein, and it is respectfully submitted that this newly developed evidence is most relevant, pertinent and material to the ultimate determination of the vitally important issues presented herein.

Request for Modified Procedure Handling

It is submitted that the nature of this evidence is such that it is susceptible of submission under the Modified Procedure and accordingly, it is respectfully requested that, should Further Hearing be granted for the limited purpose of introducing the evidence above referred to, it be assigned for such handling in the interest of all parties.

[fol. 672] Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 673] Certificate of Service (omitted in printing).

[fol. 674]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Service Date
January 24, 1963

At a Session of the Interstate Commerce Commission, Division 2, acting as an Appellate Division, held at its office in Washington, D. C.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

ORDER—Entered January 18, 1963

Upon consideration of the record in the above-entitled proceeding, petition, filed August 29, 1962, of complainants for reconsideration of the report and order of Division 2, dated July 26, 1962, together with a request that the matter herein be declared to be of general transportation importance, and of replies thereto of intervener, Southern Pacific Company, defendant, Union Pacific Railroad Company, and defendants, Northern Pacific Railway Company, Camas Prairie Railroad Company, and Walla Walla Valley Railway Company, filed October 12, 15, and 18, 1962, respectively;

It appearing, That pursuant to Rule 1.101a(4) of the General Rules of Practice the request for the aforesaid declaration is premature:

It is ordered, That the said petition for reconsideration be, and it is hereby, denied for the reason that sufficient grounds have not been presented to warrant granting the action sought.

By the Commission, Division 2, acting as an Appellate Division.

Harold D. McCoy, Secretary.

(Seal)

[fol. 676]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION FOR WAIVER OF THE PROVISIONS OF RULE 1.101(e) OF THE COMMISSION'S GENERAL RULES OF PRACTICE—January 19, 1963

Statement

Comes now The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, complainants, hereinafter referred to collectively as "Western Pacific", and files this request for a waiver of the provisions of Rule 1.101 (e) of the Commission's General Rules of Practice.

[fol. 677] Secretary McCoy, under letter date of January 11, 1963, has refused to accept complainants' Petition for Further Hearing of December 28, 1962 on the grounds it was not accompanied by a request for such waiver of Rule 1.101(e). This request is made to correct that deficiency in the December 28, 1962 Petition.

Basis for Request

Western Pacific believes that inasmuch as this proceeding is still pending for final decision by the Commission it has the obligation and duty of calling to the Commission's attention *all newly developed evidence* relating to the facts relied upon by Division 2 in reaching the decision which is here under consideration.

Division 2, in its Order served August 2, 1962, stated in part:

> "The defendants stress that these shippers have been aware of the lack of joint rates and through routes through Bieber for the last 31 years and have not submitted a written request to the defendants for relief.

However, some verbal requests have been made. In the last six years only one shipper requested the Northern Pacific to establish joint rates through Bieber, and that request was handled to the satisfaction of the shipper."

and

[fol. 678] "Nothing of record, however, indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. In fact the failure of the shipper witnesses to initiate in the last 31 years a determined campaign to persuade the defendants of the necessity of establishing through routes between points on the complainants' lines in California and points on the defendants' lines in the Northwest, is at least some indication of the adequacy of the existing routes. The expression 'in the public interest' means more than a mere desire on the part of shippers for something that would merely be convenient or desirable for them. This desire must be weighed against the effect on other carriers and the general public. On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes."

The evidence which Western Pacific now proposes to introduce is directly related to that issue. As shown in the attached Petition for Further Hearing, it was not, and could not have been, developed prior to the present date. This evidence was not in existence either at the time of the hearing or within 30 days after receipt of the Commission's Order of August 2, 1962.

Western Pacific believes that the Commission, having relied upon a specific condition existing at the time the record was made, must be advised as to the present status of the facts on that very same issue. It would be an in-[fol. 679] excusable waste of the Commission's time, as well as that of the parties litigant, to force Western

Pacific to file a new complaint based upon new facts when this matter is not yet closed. The filing of a new complaint, with all of its attendant expense and inconvenience, can be avoided by the simple expedient of accepting this Petition for Further Hearing and allowing the submission of the evidence under Modified Procedure as requested.

Wherefore, in the interest of justice and to avoid needless further proceedings herein, in order to bring this pertinent evidence to the attention of the Commission we respectfully request that the provisions of Rule 1.101(e) be waived. To facilitate further handling of this matter I am submitting at this time complainants' Petition for Further Hearing so that in the event it is accepted for filing it may be promptly submitted to the Commission.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 680] Certificate of Service (omitted in printing).

[fol. 682]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.,
Complainants,

vs.

CAMAS PRAIRIE RR. Co., et al., Defendants.

PETITION PURSUANT TO RULE 1.101(a) (4) GENERAL RULES OF PRACTICE SEEKING A FINDING THAT AN ISSUE OF GENERAL TRANSPORTATION IMPORTANCE IS INVOLVED—Filed January 30, 1963

Jurisdictional Statement

This Petition is filed by The Western Pacific Railroad Company, and its subsidiary lines, hereinafter referred to collectively as "Western Pacific". It is timely filed as the Order of Division 2 denying Western Pacific's Petition for Reconsideration, was served January 24, 1963, and such Order, pursuant to the provisions of Rule 1.101(a) (3) of the Commission's General Rules of Practice is administratively final.

Western Pacific's Petition for waiver of the provisions of Rule 1.101(e) and Petition for Further Hearing for Purpose of Introducing Newly Developed Evidence filed January 21, 1963, and as yet not acted upon, does not come within the purview of the precise provisions of Rule 1.101 (a) (4), and hence its pendency does not affect the filing of this Petition.

[fol. 683]

Arguments Reserved

As required by the rules, this Petition is directed only to the contention that this is a case involving a matter of general transportation importance. Failure to reassert the errors heretofore alleged to be reflected in Division 2's Orders (served August 2, 1962 and January 24, 1963) does not constitute a waiver or abandonment thereof.

Basis for Relief Sought

Division 2's decision is the first ruling of the Commission or the Federal Court system, which holds that a carrier must either physically connect with, or already participate in through routes with, the discriminating carrier in order to enjoy the protection afforded by Section 3 (4) of Part I of the Interstate Commerce Act.

Such a conclusion is directly contrary to the decision of the United States Supreme Court in *Chicago, Indianapolis & Louisville Ry. Co., et al.* v. *U. S.*, 270 U.S. 287, where the Court held, in part:

"It is argued that . . . where there is no direct physical connection with the railroad alleged to be discriminated against, and no joint service is being rendered by the . . . (defendants) with the South Shore, there can not, in law, be unjust discrimination. . . . "

"Direct physical connection with the carrier subjected to prejudice is not an essential."

[fol. 684] "Unjust discrimination may exist in law, as well as in fact, although the injury is inflicted by a railroad which has no such direct connection." (Pages 292-293.)

At no stage of this proceeding has Division 2 acknowledged the existence of, let alone distinguished, this decision which has been repeatedly called to its attention. It is clear that this decision serves to prescribe the limits of the language of Congress, and must directly and forcefully affect rail carriers in every section of the country. It is, in practical effect, a land mark decision which drastically limits the scope of the firm Congressional mandate against the creation and perpetuation of discriminatory practices and strangulating monopolies in the common carrier field. In such circumstances, this case far transcends the serious question of whether Western Pacific is being unjustly and unlawfully treated and is a matter of National concern.

Wherefore, it is respectfully prayed that it be found that this proceeding does involve an issue of general transportation importance and thus, with regard to all of its aspects and issues, is worthy of, and does require, the attention and decision of the Full Commission.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 685] Certificate of Service (omitted in printing).

[fol. 687]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO COMPAINANTS' PETITION FOR WAIVER OF RULE 1.101(e) AND PETITION FOR FURTHER HEARING—Filed February 10, 1963

Preliminary Statement

Complainant, The Western Pacific Railroad Company, together with its short-line subsidiaries, hereinafter referred to as "Western Pacific" or "complainant," asserts in its petitions for waiver of provisions of Rule 1.101(e) and further hearing that this proceeding should be reopened to receive allegedly newly developed evidence consisting of [fol. 688] stimulated formal requests by certain shippers for rates on particular commodities via Bieber, California, and the Portland gateway between points in California, on the one hand, and points in Oregon, Washington and Idaho on the other.

Following the receipt of the adverse report and order of Division 2 on August 2, 1962, plaintiff, on August 29, filed a petition for reconsideration which was denied by the Commission on January 18, 1963. At the same time, complainant launched a vigorous campaign up and down the Pacific Coast to induce shippers to file requests with the appropriate carrier rate bureaus for joint through rates via Bieber, California. Complainant now asserts that such belatedly manufactured evidence constitutes recently discovered evidence requiring your Commission to waive Rule 1.101(e) as requested in complainant's first petition and grant complainant a further hearing for purposes of introducing such newly discovered evidence as requested in the second petition.

ARGUMENT

I.

Good Cause Not Shown for Waiver of Rule 1.101(e)

The decision of Division 2 in this proceeding was served on August 2, 1962. Complainant's petition for reconsideration was not served until January 21, 1963, almost six months after the Commission's order and almost five months after the time for filing such a petition had expired. [fol. 689] Rule 1.101(e) requires that petitions for rehearing, reargument and reconsideration be filed within 30 days after the date of service of a decision or order, "except for good cause shown." Complainant is obviously aware of this sound rule as evidenced by the fact that on August 29, 1962, it filed a 33-page petition for reconsideration which was replied to by the defendants, carefully considered by the Commission, and denied by Division 2, acting as an appellate division, on January 18, 1963, the same date complainant mailed the two petitions here in question.

In its petition for waiver of Rule 1.101(e), complainant endeavors to meet the salutary requirement of "good cause" by asserting that the alleged evidence which it has now manufactured "was not and could not have been, developed prior to the present date." (Petition for Waiver of Rule, p. 3). This is the sole reason proffered by complainant in justification of its failure to comply with the Commission's 30-day rule.

Complainant's proposed evidence consists of alleged formal requests by shippers for the publication of certain rates via Bieber, California, and the Portland gateway which resulted from the campaign initiated by complainant subsequent to its receipt of the Commission's order of August 2, 1962.

Such proposed evidence clearly cannot be characterized as newly discovered evidence. It is merely evidence created [fol. 690] by the complainant subsequent to the receipt of the adverse report and finally brought to the attention of the Commission almost six months thereafter.

If such a campaign as complainant has belatedly initiated has produced evidence which is material and relevant to the issues here presented, which defendants do not concede, no reason is shown why such a campaign could not have been initiated prior to the filing of the complaint herein or, at least, prior to the hearing. Manifestly, complainant has not met the requirement of Rule 1.101(e)—that good cause be shown for the extremely late filing of this petition. We submit that no cause has been shown, let alone good cause.

Due to the complainant's failure to show good cause for waiver of the rule in question, its petition for waiver of the rule must be denied.

II.

Complainant's Request for Further Hearing Not Justified

Assuming arguendo that complainant's petition seeking waiver of Rule 1.101(e) is granted, defendants submit that complainant's petition seeking a further hearing should be denied because of its patent failure to meet the twofold requirement of Rule 1.101(b), namely, that such evidence not be cumulative and that an explanation be given showing why such evidence was not previously adduced.

[fol. 691] The evidence in question, consisting of requests by certain shippers for publication of rates on certain commodities through Bieber, California, via the Portland gateway, produced as a result of complainant's intensive solicitation campaign initiated subsequent to the receipt of the Commission's report and order of August 2, 1962, is clearly cumulative.

Complainant initially alleged that defendants had violated both Sections 1(4) and 3(4) of the Act and sought an affirmative order from the Commission requiring the establishment of through routes and joint rates through Bieber, California, via the Portland gateway between the points involved. However, complainant finally abandoned its Section 1(4) allegation in its petition of August 29 for reconsideration of the report and order of Division 2 and we can, therefore, assume that complainant agrees with the report

and order of Division 2, that there is no public need for the sought routes and rates. Thus, the sole basis for complainant's petition for reconsideration which was denied by the Commission in its order of January 18, 1963, was an alleged violation of Section 3(4) of the Act.

In a futile effort to establish public need for the sought routes and joint rates, complainant presented the testimony of 15 shipper witnesses. It is readily apparent that the further evidence which complainant now proposes to adduce would be cumulative of that already presented at [fol. 692] the hearing in support of the Section 1(4) allegation which complainant has since abandoned. Such evidence would add nothing to the record and hence would be merely cumulative of evidence already of record.

With respect to the second requirement of Rule 1.101 (b), namely, an explanation of why such evidence had not been previously adduced, complainant has offered no explanation as to why evidence which it now seeks to introduce was not developed at an earlier date. Complainant frankly admits that the evidence is a result of an intensive campaign launched subsequent to the receipt of the Commision's report and order of August 2, 1962. No reason is given as to why such a campaign could not have been initiated prior to the hearing here in question. Obviously, complainant has failed to meet the second requirements of Rule 1.101(b).

The additional evidence which complainant now seeks to introduce is not relevant to the alleged Section 3(4) violation. The shipper testimony which complainant introduced at the hearing was presented in support of its Section 1(4) allegation in the expectation that it would establish the public need for the routes sought. The Division carefully considered such testimony and found it wanting. Complainant, by abandoning its Section 1(4) allegation in its petition for reconsideration now concurs with the Commission that public need does not require the establishment of the routes and rates here involved. Obviously, such additional [fol. 693] evidence would, in no way, support the essential

requirements of a Section 3(4) violation. Clearly, such evidence is not relevant to such a charge, as complainant virtually concedes in its petition for rehearing (p. 5).

However, even assuming that complainant's proposed evidence is not cumulative and could not have been previously produced and is relevant and material to the alleged Section 3(4) violation, it should still not be considered. Such requests will be promptly and fully considered by both the North Pacific Coast Freight Bureau and the Pacific South Coast Freight Bureau. We can assume that these rate bureaus will fully and carefully consider these inspired requests in accordance with their established procedures. Until they have fully considered these requests, it would be premature to even speculate as to the final action that they will take.

Complainant, by conceding in its petition for reconsideration an absence of public need for the routes which it initially sought pursuant to Section 1(4) of the Act, admits that the proposed evidence, even if adduced, would not and should not alter the ratio decidendi of the Division's report and order. Further, if this proceeding were reopened for the receipt of such evidence, it could not and should not be handled under modified procedure.

The granting of the instant petition would simply encourage protracted litigation to the detriment of all par- [fol. 694] ties and the overriding public interest. Obviously, if parties are entitled to a further hearing at any time without showing good and substantial cause why the Commission's rules should be waived as well as good and substantial cause for the rehearing itself, "there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening." *I.C.C.* v. *Jersey City,* 322 U. S. 503, 514 (1944).

Conclusion

Complainant apparently concedes that its belatedly manufactured evidence is not really material to a Section 3(4) proceeding. Notwithstanding this fact, it seeks to re-

open this proceeding for a further hearing solely to produce such evidence. We submit that complainant has wholly failed to show good cause for waiver of the Commission's 30-day rule for filing of such a petition as well as sufficient cause to warrant the reopening of this proceeding for a further hearing and that, therefore, both petitions should be denied.

Respectfully submitted,

Earl F. Requa, Frank S. Farrell.

Due Date: February 11, 1963.

[fol. 695] Certificate of Service (omitted in printing).

[fol. 697]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANT, UNION PACIFIC RAILROAD COMPANY, TO COMPLAINANT'S PETITION FOR WAIVER OF RULE 1.101(e) AND PETITION FOR FURTHER HEARING—Filed February 11, 1963

Comes now Union Pacific Railroad Company, defendant, and submits this reply to the complainant's petition for waiver of Rule 1.101(e) of the Commission's General Rules of Practice and also to the complainant's petition for further hearing.

Chronological Statement of the Case

The Western Pacific Railroad Company, and its wholly owned subsidiaries, filed a complaint on February 10, 1961, charging defendants, Union Pacific Railroad Company and Northern Pacific Railway Company, and their subsidiaries, with violations of Sections 1(4) and 3(4) of the Interstate Commerce Act. After the issues were joined by appro-

priate pleadings, including intervention of Southern Pacific Company, the complaint was heard before Examiner J. F. Wright in San Francisco, California, May 8-10, 1961. [fol. 698] Briefs were filed by the parties on July 10, 1961, and on August 10, 1961, the Examiner served his report and recommended order finding a violation of Section 3(4) of the Act. The defendants, Union Pacific and Northern Pacific, and intervenor, Southern Pacific, filed exceptions to the Examiner's proposed report and, after reply by the complainant, the Commission, Division 2, in a report dated July 26, 1962, and served August 2, 1962, found that there was no violation of the Interstate Commerce Act and ordered the complaint dismissed.

The complainant thereupon petitioned for reconsideration of the report and order of Division 2, replies were filed by the opposing parties, and on January 18, 1963, the petition for reconsideration was denied. There remain for disposition by the Commission the complainant's petition for waiver of Rule 1.101(e), the petition for further hearing and the petition seeking a finding that an issue of general transportation importance is involved.

I. Petitioner Has Not Shown Good Cause for Waiver of Rule 1.101(e).

This rule of the Commission's General Rules of Practice provides that any petition seeking a change in a decision or order of the Commission, whether for reconsideration, reargument, rehearing, further hearing, or otherwise, must be filed within 30 days after the date of service of the decision or order, *except for good cause shown and upon leave granted.*

Since the complainant is seeking a change in the order of Division 2, which was served August 2, 1962, by requesting [fol. 699] a further hearing, it has the burden of explaining why the petition was filed almost six months after the Commission order and almost five months after the time for filing the petition had expired. Its burden is particularly heavy in view of the fact that complainant had

no difficulty in filing its petition for reconsideration within the prescribed period.

In support of its request for a waiver of the time requirement the Western Pacific alleges that the evidence it now proposes to introduce "was not, and could not have been, developed prior to the present date" (p. 3, Petition for Waiver of Rule). No other reason, or good cause, is advanced to explain the failure to comply with the Commission's time requirement.

The proposed evidence is described in the petition for further hearing as constituting a number of formal shipper requests for publication of rates filed with the Pacific South Coast Freight Bureau and the North Pacific Coast Freight Bureau. The complainant characterizes these occurrences as "newly developed evidence" stating that the rate applications were instigated by the Western Pacific as a result of a campaign undertaken by it after service of the Commission's order of August 2, 1962. There is no reason why evidence of this nature could not have been developed at the inception of this proceeding, if the complainant had considered it of any materiality.

This is not newly discovered evidence. It is evidence manufactured by the Western Pacific after receipt of a [fol. 700] report adverse to it and now brought to the attention of the Commission almost six months after the report. The rule requiring that petitions seeking a change in a Commission order be filed within 30 days of service of the order is designed to bring some degree of finality to Commission proceedings. Its admirable purpose is frustrated if a party to a proceeding can bide its time, evaluate an adverse Commission report, wait out the period for reconsideration or rehearing and then request waiver of the time-for-filing rule by arguing that evidence newly created by it should be considered by the Commission.

The Western Pacific has not presented sufficient good cause to justify a waiver of Rule 1.101(e) and its petition for waiver of the rule should be denied.

II. Petitioner Has Not Justified Its Request for a Further Hearing.

If the Commission should waive Rule 1.101(e) and permit filing of Western Pacific's petition for further hearing it should deny the petition since there is no justification for a further hearing.

Rule 1.101(b) provides:

> "When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

The evidence the Western Pacific seeks to introduce fills none of the requirements of the rule—it is essentially cu- [fol. 701] mulative; it could have been adduced previously and it is not material to the issues raised in this proceeding. Even if the proposed evidence were introduced it would not be sufficient to bring about any change in the Commission's decision.

It is self-evident that the proposed evidence could have been adduced previously. The Western Pacific acknowledges that the formal shipper rate requests that have been filed with the Pacific South Coast and North Pacific Coast Freight Bureaus are the result of its agitation. The same activity could have been undertaken by the Western Pacific at the time it filed its complaint. It is strangely contradictory for the complainant to assert that it considers the proposed evidence of "questionable materiality" (p. 5, Petition for Further Hearing). This defendant is in agreement with complainant's evaluation of the proposed evidence, but this does not alter the complainant's obligation to develop and introduce at the appropriate time the evidence it intends to rely upon to establish its allegations.

The evidence is truly cumulative in that it reflects nothing more than shipper requests for rates over the Bieber route between California and the Pacific Northwest. Evidence

that a certain number of formal rate applications have been filed will add nothing to the testimony of shippers already in the record. The complainant has expressed satisfaction with the quantity and caliber of shipper support it has received, having characterized the 16 shipper witnesses as being traffic and executive representatives of some of the [fol. 702] most important industries in the Pacific Northwest (p. 36, Complainant's Reply to Exceptions). Proof that these same shippers and others like them have submitted rate applications to the appropriate rail rate bureaus would be merely cumulative of the evidence already on the record.

The evidence proposed to be introduced is both immaterial and irrelevant. While these words are often used interchangeably, "immaterial" denotes evidence offered to prove a proposition not in issue, while "irrelevant" denotes evidence which does not logically tend to establish any material proposition (*Hansson* v. *Catalytic Construction Company*, 127 A.2d 431, 434; 43 N. J. Super. 23).

(a) The fact that certain shippers have filed formal applications for rates over the Bieber route is immaterial to the determination of a Section 3(4) violation. This section of the Act pertains to discrimination between carriers, and the unavailability of a full line of joint rates over the Bieber route has already been established in the record.

(b) Even if evidence of shipper desire for rates over the Bieber route were material to resolution of a Section 3(4) issue the evidence proposed to be introduced is not relevant. The fact that a shipper rate application has been filed with a railroad rate bureau is not persuasive of an actual public need for the rate or for prescription of the route over which the rate would [fol. 703] apply. The rate applications will be decided by the rate bureaus under normal procedures and there can be no assumption that meritorious proposals will be denied. Mr. A. J. Stilling, Freight Traffic Manager of Union Pacific Railroad Company, has testified that

the Union Pacific intends to continue its past policy of giving serious consideration to the publication of joint rates over the Bieber route where there is a proved need for them in the public interest (R. 296).

It is actually misleading for the complainant to imply that the defendants have contended that the absence of formal shipper requests for publication of rates over the Bieber route is material to the determination of the Section 3(4) issue (pp. 5, 6, Complainant's Petition for Further Hearing). These allegations are based upon a statement on oral argument and to certain references to shipper rate applications in the report and order of Division 2, both relating to the Section 1(4) issue (Tr. 499, 500 and shs. 13, 23, Report and Order of Division 2).

At the outset of the Discussion and Conclusions section of the report, Division 2 observed that "The complainants rely primarily on the alleged violation of section 3(4) of the act." (sh. 19) This is undisputed. Although the Western Pacific initially alleged violations of Sections 1(4) and 3(4) of the Act in its complaint, little emphasis was placed on the [fol. 704] Section 1(4) issue and the gradual de-emphasis of this allegation ripened into outright abandonment following the report and order of Division 2.

Section 3(4), insofar as it is material to this case, provides that carriers shall not discriminate in their rates, fares and charges between connecting lines. The Commission discussed the elements of a Section 3(4) violation and culminated with the finding that the carriers are not connecting lines and that the evidence did not establish the similarity of circumstances and conditions which justify equality of treatment (sh. 22). In its ultimate conclusion the Commission found that the refusal of the defendants to establish through routes and joint rates as requested by the complainant was not shown to be unjust and unreasonable nor to result in discrimination in violation of Section 3(4) of the Act (sh. 24). In its discussion of the Section 3(4) issue the Commission did not mention formal shipper rate

applications or the existence of shipper support for the prescription of new rates and routes via Bieber.

However, the Commission observed that while the complainants have indicated a willingness to rely alone on the alleged violation of Section 3(4) they also alleged other violations and request the prescription of through routes and joint rates over the route sought (sh. 22). Accordingly the Commission proceeded to consider the evidence material to Section 1(4) and discussed at length the shipper evidence introduced by the complainant (shs. 9-13). In this connection the Division mentioned and considered the proof [fol. 705] of formal shipper rate applications. After full consideration of the evidence going to Section 1(4) and dealing also with the implementing provisions of the Act, Sections 15(3) and 15(4), the Commission concluded that the establishment of through routes and joint rates in connection with the complainants through Bieber and Portland was not shown to be necessary or desirable in the public interest (sh. 24).

Subsequent to the report and order of the Commission the Western Pacific unequivocally abandoned its Section 1(4) allegation, stating in its petition for reconsideration that "The Section 1(4) allegations have been abandoned" (p. 25) and "Now that this case has been reduced to the Section 3(4) case * * *" (p. 24). With this limitation of issues the proposed evidence of formal shipper rate applications is plainly not material and the Western Pacific cannot be prejudiced by a denial of its request for a further hearing.

In one of its early decisions, in *Whiteland Canning Co. v. P., C., C. & St. L. Ry. Co.*, 23 I.C.C. 92, the Commission made some sensible comments on the subject of rehearings, and those observations remain sound enough for application here.

> "The petition does not show how the above evidence, if introduced, would alter the conclusion already reached, and still less does it indicate any reason for not having introduced this testimony upon the first hearing. When full opportunity for hearing has been

> accorded carriers must show as ground for a rehearing that the evidence which they now offer either could not or ought not to have been introduced upon the first hearing, and also that this evidence, if introduced, [fol. 706] would probably lead to a reversal of our previous conclusion. It is no hardship to require carriers in the trial of their cases before this Commission to observe to a very moderate degree the same rules which would obtain in a trial at law. Whenever this Commission is convinced that its order works substantial injustice it will unhesitatingly set aside that order, but we cannot continually retry these cases upon the mere statement of the carrier that it desires to introduce some further testimony and believes that the decision of the Commission is wrong." (p. 94)

See also *National Radiator Corp.* v. *Pennsylvania R. Co.*, 203 I.C.C. 172, 173.

III. Granting Petitioner's Request for a Further Hearing Will Encourage Protracted Litigation Before the Commission.

The Western Pacific framed the issues in its complaint to its own satisfaction, received a full hearing and accepted a favorable Examiner's report. After receipt of an adverse Commission decision the complainant then initiated a campaign designed to persuade shippers to file formal rate applications before rail rate bureaus and thus created the evidence it now seeks to have admitted in this proceeding.

While this defendant recognizes and endorses the Commission obligation to develop a complete record in proceedings before it, the interests of administrative justice are not served if tactics such as this are rewarded. Parties before the Commission will find it expedient to hold back the submission of borderline evidence—especially if that evidence may cut both for and against the party—gamble on a favorable outcome, and then proceed to patch up its case [fol. 707] by the generation of additional evidence to be submitted at a further hearing if the final Commission decision goes against it.

An allegation of prejudice by denial of its petition would receive little sympathy from the courts under these circumstances. In an opinion liberally supported by decisions of the Supreme Court, the Federal district court in *Illinois Cent. R. Co.* v. *United States,* 101 F. Supp. 317, declared:

> "'Though the order substantially reduced the carriers' revenues, we do not consider the merits of the application for rehearing, as we think the carriers' lack of diligence in bringing this matter to the Commission's attention deprived them of any equity to complain of the refusal of their petition. They sat silent and took the chance of a favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted. The denial of a rehearing, in view of this delay, was not such an abuse of discretion as would warrant setting aside the order.'" (p. 326)

Conclusion

The record is closed and with denial of complainant's petition for reconsideration the Commission has spoken with administrative finality. The complainant has not shown good cause for waiver of the Commission's time-for-filing requirement nor has it shown sufficient justification for an order reopening this proceeding for further hearing. [fol. 708] The petition for waiver of Rule 1.101(e) and the petition for further hearing should be denied.

Respectfully submitted,

H. E. Roos, John J. Burchell, William P. Higgins, Attorneys for Union Pacific Railroad Company, Defendant.

Due Date: February 11, 1963.

1416 Dodge Street, Omaha, Nebraska.

Certificate of Service (omitted in printing).

[fol. 710]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF INTERVENER SOUTHERN PACIFIC COMPANY TO COMPLAINANTS' PETITION FOR WAIVER OF RULE 1.101(e) AND PETITION FOR FURTHER HEARING—Filed February 11, 1963

Comes now intervener Southern Pacific Company and replies to complainants' petition for waiver of Rule 1.101(e) of the Interstate Commerce Commission's General Rules of Practice and to complainants' petition for further hearing.

Preliminary Statement

This proceeding was commenced on February 10, 1961, with the filing of a complaint by Western Pacific Railroad Company and its wholly-owned subsidiaries, charging that Union Pacific Railroad Company and Northern Pacific Railway Company had violated sections 1(4) and 3(4) of the Interstate Commerce Act. Hearings were held in San Francisco, Calif., from May 8 to 10, 1961. Briefs were thereafter filed, and on August 10, 1961, the examiner's recommended report and order was served. Said report [fol. 711] and order recommended that the Commission find a violation of section 3(4) of the Act. Thereafter exceptions to said proposed report were taken and replies were made. Division 2 of the Commission, in a report and order served August 2, 1962, found no violation of the Interstate Commerce Act and ordered the complaint dismissed. Complainants filed a petition for reconsideration of the report and order of Division 2, and, after replies were filed by defendants and intervener Southern Pacific Company, said petition for reconsideration was denied on January 18, 1963. Complainants have now filed a petition

for waiver of the provisions of Rule 1.101(e) of the Commission's General Rules of Practice so that they may file a petition for further hearing.

Complainants' Petition for Waiver of the Provisions of Rule 1.101(e) of the Commission's General Rules of Practice Should Be Denied

Rule 1.101(e) of the General Rules of Practice requires that, *except for good cause shown* and upon leave granted, petitions (in this case for further hearing) must be filed within thirty days after the date of service of a decision or order. In this proceeding said thirty-day period expired on September 4, 1962, five months ago. As a showing for good cause, complainants claim that there is "newly developed evidence" and that this evidence was not and could not have been developed prior to the present date (Petn. for Waiver of Rule 1.101(e), p. 3). The evidence that complainants allude to is the filing and docketing with Pacific South Coast Freight Bureau and North Pacific Coast Freight Bureau of requests for voluntary publication of [fol. 712] rates via the Bieber route on a level competitive with Southern Pacific via Portland. Complainants also allege that more such requests are being prepared and will be docketed or filed for docketing in the near future.

Complainants' characterization of this evidence as "newly developed" is directly refuted by their own statement that Western Pacific *launched* the campaign to have these requests filed (Petn. for Further Hearing, p. 2). Under these circumstances, it is not "newly developed evidence"; it is newly *manufactured* evidence. If newly manufactured evidence is to constitute a showing of good cause under Rule 1.101(e), it will mean that litigants in Interstate Commerce Commission proceedings will wait until after service of a decision or order and then proceed to manufacture evidence to bolster or complete their case. It is submitted that such a result is not desirable, and indeed would only serve to prolong already lengthy Commission proceedings.

Complainants have failed to show good cause, and their petition for waiver of the provisions of Rule 1.101(e) of the Commission's General Rules of Practice should be denied.

Complainants' Petition for Further Hearing Should Be Denied

If the Commission should waive the provisions of Rule 1.101(e) and allow complainants to file their petition for further hearing, said petition should be denied because complainants have failed to make a proper showing under Rule 1.101(b). Rule 1.101(b) states:

> [fol. 713] "When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced."

1. Complainants have not explained why such evidence was not previously adduced.

Complainants have completely failed to make any showing as to why the evidence they now seek to introduce could not have been obtained prior to or during the hearings in this case. Complainants freely admit that they alone are responsible for the launching of a campaign to have these formal requests filed and they make no explanation as to why it was not available at an earlier date, except the bland statement that "it was not in existence until now" (Petn. for Further Hearing, p. 5). As the court stated in *United States* v. *Northern Pac. Ry.*, 288 U.S. 490, 494 (1933):

> "Though the order substantially reduced the carriers' revenues, we do not consider the merits of the application for rehearing, as we think the carriers' lack of diligence in bringing this matter to the Commission's attention deprived them of any equity to

complain of the refusal of their petition. *They sat silent and took the chance of a favorable decision on the record as made.* They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted." (Emphasis added.)

So, also, in *Goss* v. *Director General,* 58 I.C.C. 169, 173 (1920) the Commission said:

> "In its brief on exceptions complainants request that the case be reopened for the purpose of enabling evidence to be presented as to the reasonableness of the Auburn rates via the Lackawanna-New York Central Lines. Ample opportunity was given complainants to present such evidence when the record in this case was made, and the request is therefore denied."

[fol. 714] It is submitted that complainants have utterly failed to explain why such evidence was not previously adduced.

2. The evidence sought to be introduced is cumulative and immaterial to the issues

Complainants have previously called a number of shippers to testify upon the record. Intervener Southern Pacific Company fails to see how proof by these same shippers or by other shippers that they have submitted rate applications to rail bureaus would add anything to the record as already developed. To the contrary, such additional evidence would be merely cumulative. As was stated in *Public Service Comm'n of Nevada* v. *Southern Pac. Co.,* 211 I.C.C. 567, 568 (1935):

> ". . . On exceptions intervener seeks further hearing to enable it to renew and amplify its evidence to show the highly profitable character of the rates assailed. There is no showing that the nature and purpose of the evidence to be adduced is not merely cumulative, and the request is denied."

Furthermore, complainants, in their petition for reconsideration, have stated at page 25 that "The section 1(4) allegations have been abandoned"; yet complainants now seek a further hearing to introduce "newly developed" evidence which is material only to a violation of section 1(4). Even complainants agree that in connection with a violation of section 3(4) the question of whether there have been formal shipper requests for the publication of rates is at least of questionable materiality (Petn. for Further Hearing, p. 5).

Under these circumstances, it is submitted that the evidence proposed to be introduced at a further hearing is [fol. 715] cumulative and is immaterial to a violation of section 3(4).

The language of the Commission in *Cattle Raisers Assn. v. Chicago, B. & Q. R.R.*, 12 I.C.C. 6 (1906), is appropriate to this proceeding. In that case the Commission said:

> "... We feel that when an order has been made the case before this Commission should be treated as closed, and that it ought not to be opened except upon a showing that some wrong or injustice has been or will be effected."

Complainants have failed to show that under Rule 1.101 (b) they are entitled to a further hearing.

Complainants' Request for Modified-Procedure Handling

Intervener Southern Pacific Company objects to complainants' request that further hearings take place by way of modified procedure.

Conclusion

Complainants have failed to show good cause for the waiver of Rule 1.101(e); nor have complainants shown sufficient justification for an order directing a further hearing in this proceeding. Complainants' petition for waiver

of Rule 1.101(e) and complainants' petition for further hearing should be denied.

Respectfully submitted,

Thormund A. Miller, Charles W. Burkett, Jr., W. Harney Wilson, Attorneys for Intervener, Southern Pacific Company.

San Francisco, Calif., February 8, 1963.

[fol. 716] Certificate of Service (omitted in printing).

[fol. 717]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Service Date
February 20, 1963

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.,

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

ORDER—February 14, 1963

Upon consideration of the record in the above-entitled proceeding, the report and order of the Commission, Division 2, decided July 26, 1962, and petition, filed January 30, 1963, of complainants seeking a finding that an issue of general transportation importance is involved herein; and for good cause:

It is ordered, That the petition be, and it is hereby, granted, and that this proceeding is hereby designated as

one involving an issue of general transportation importance.

It is further ordered, That petitions for reconsideration in this proceeding may be filed within 30 days after the date of service of this order and replies thereto within 20 days after the final date for filing such petitions.

By the Commission.

Harold D. McCoy, Secretary.

(Seal)

[fol. 719]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

COMPLAINANTS' PETITION TO THE FULL COMMISSION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2 AND COMPLAINANTS' REQUEST FOR ORAL ARGUMENT BEFORE THE FULL COMMISSION—Served March 19, 1963

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

Due Date: March 22, 1963.

* * * * * * *

[fol. 720] Statement of Position

The primary question to be determined at the outset, however, is whether Western is a "connecting line" as that term is used in Section 3 (4). Such a term was, and is, intended to have full application to those carriers who are an integral part of a through route initially authorized, and at all times operated for all practical effects as a single line of railroad. Such a route is the Bieber route which does have a physical connection with defendants. Thus, even a finding that physical connection is necessary in order to invoke the provisions of Section 3 (4) must result

in the further finding that Western Pacific fully meets that requirement.

The Examiner properly held that, all of the facilities which have been used by defendants in the handling of cast iron pipe (moved in substantial quantities over the Bieber route through Portland to its connection with defendants) are the same facilities that would be utilized should the Bieber route be opened commercially to all other classes of traffic moving to points on the lines of defendants.* Thus, while the through rates on pipe thus established are apparently not broad enough under the doctrine of the *Thompson*** case to make the action of defendants in establishing such rates a general holding out to the public *under other sections of the Act* (a point not disputed by complainants who are here trying to remedy that problem), they do demonstrate the absolute and complete feasibility of the Bieber [fol. 721] route's ability to provide a fully satisfactory operation in conjunction with defendants.

• • • • • • •

[fol. 722] The economic benefits inherent in opening these routes to a full utilization can perhaps be best visualized by a brief recitation of a representative situation existent under the present system. A shipper at Seattle, Washington, can *physically* move his cars over the Bieber route in conjunction with Great Northern, Union Pacific or Northern Pacific. He can *economically* route a car over the Bieber Gateway only if neither Union Pacific nor Northern Pacific is shown in the routing.

• • • • • • •

[fol. 722a]

Western Pacific Is a "Connecting Line" Entitled to Invoke the Provisions of Section 3 (4)

• • • • • • •

---

* Sheet 5 of Hearing Examiner Wright's Report.

** *Thompson* v. *United States*, 343 U.S. 549.

[fol. 723] It is clear that except for a very limited line of commodities, defendants have refused to establish through routes and rates with Western Pacific. This is a situation Western Pacific desires to remedy through this complaint. The law would surely make little sense, or serve little purpose, if it were interpreted in such manner as to be unavailable in the case of refusal to establish through rates on any basis, yet available where the *level* of established through rates were challenged.

• • • • • • •

[fol. 723a]

Separation of Issues and Evidence as They Apply to the Several Territories in the Pacific Northwest

• • • • • • •

[fol. 724] Since the traffic could physically have been directed north and east as soon as it reached Wishram, it is possible that Division 2 felt that this amounted to wasteful transportation. Defendants are no more prejudiced by such operation than they are when they interchange with Southern Pacific, but complainants are compelled to recognize certain factors that might have disturbed the Division with regard to the traffic moving to or from those points *east of the Cascades served by Great Northern.*

The selfish interest of Western Pacific would be served if the nondiscriminatory rates here sought were to be established via Wishram as that route is obviously shorter than the Portland route. However, the decision to seek the relief in this proceeding via Portland, rather than Wishram, rests upon the present state of law rather than the selfish interest of Western Pacific. In order to prove or establish [fol. 725] a Section 3 (4) case, we simply had to go the point through which the defendants connect with both competitive lines—this is Portland. Southern Pacific does not reach Wishram and there is no factual condition which would possibly allow Western to establish a discrimination case through Wishram. A Section 1 (4) case to force Great Northern to interchange with the other defendants at Wish-

ram, would be obviously an impossibility in view of the precise Section 15 (4) limitations against compulsory short hauling. To obtain protection of the law, therefore, Western had to ask nondiscriminatory rates via Portland rather than Wishram even as to traffic moving to or from points east of the Cascades served by Great Northern.

* * * * * * *

[fol. 725a] Conclusion

* * * * * * *

[fol. 726] While the relief sought is justified, under the law and the prevailing fact situation, to and from the territory both east and west of the Cascades, the evidence does not allow the blanketing effect heretofore given it. Complainants' clearest case has been made as to the discrimination which denies access to the total territory west of the Cascades and to that vast area east of the Cascades not served by Great Northern. Those situations cannot be prejudiced by any peripheral issues which tend to cloud the situation applying with regard to the limited eastern territory served by Great Northern via Wishram.

* * * * * * *

Complainants must realistically approach the Commission with the acknowledgment of the Division's apparent [fol. 727] reluctance to abate this discrimination insofar as it is practiced on traffic directly competitive with that moved by Great Northern via Wishram. While the legal principles are the same in each situation (*all* traffic competitive with Great Northern moves through Portland now) there may be some reluctance to force defendants to open these routes via Portland while their competitor moves through Wishram. However, this applies *only* in connection with traffic directly competitive with Great Northern east of the Cascades.*

---

* Appendix A circles the major points served by Great Northern east of the Cascades.

As to traffic west of the Cascades and that vast area east thereof not served by Great Northern this situation cannot legitimately be held to prevail, and Great Northern would not be gaining any competitive advantage by a commercial opening of the routes. The situations, therefore, must be separately considered and determined on the facts and equities applicable thereto.

The Commission could issue its order herein ordering the discrimination to cease and desist as to all territory west of the Cascades, and all territory east thereof not served by Great Northern, and thereby provide the Northwest with truly competitive rail service, while denying such relief to that territory east of the Cascades served direct by Great Northern.

Such a result would surely remove from defendants any realistic fears about their ability to compete with traffic moved via Wishram. That limited traffic would, of course, still be deprived of the benefit of competitive service, but if that sacrifice is necessary to enable the manifold benefits [fol. 728] of competitive service to reach all other traffic then it is a worthy one indeed.

* * * * * * *

Requested Findings

It is respectfully requested that the Full Commission reverse the decision of Division 2 herein, and enter the following specific findings:

1. The Western Pacific, as an integral segment of the Bieber route, is a line which connects with defendants Northern Pacific and Union Pacific at Portland, Oregon.

2. Southern Pacific also connects with defendants Northern Pacific and Union Pacific at Portland, Oregon.

3. Western Pacific and Southern Pacific are directly competitive on railroad traffic moving between the

[fol. 729] State of California on the one hand and the States of Oregon, Washington and western Idaho on the other.

4. Defendants Union Pacific and Northern Pacific presently join Southern Pacific, and its connections excluding Western Pacific in a full line of joint through rates on traffic moving between California and Oregon, Washington and western Idaho and refuse, except in extremely limited circumstances, to join Western Pacific, and its connections, in a competitive full line of joint through rates on the same traffic.

5. The conditions affecting the handling by defendant Northern Pacific of traffic moving through the Portland Gateway to or from that territory located *west* of the Cascade Mountains, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

6. The conditions affecting the handling by defendant Northern Pacific of traffic moving through the Portland Gateway to or from that territory located *east* of the Cascade Mountains, not reached by the direct service of Great Northern, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

7. The conditions affecting the handling by defendant Union Pacific of traffic moving through the Portland Gateway to or from that territory located *west* of [fol. 730] the Cascade Mountains, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

8. The conditions affecting the handling by defendant Union Pacific of traffic moving through the Portland Gateway to or from that territory located *east* of the

Cascade Mountains, not reached by the direct service of Great Northern, are materially and substantially similar whether the traffic be interchanged at Portland with Southern Pacific or the Bieber route.

9. That defendant Northern Pacific has practiced and continues to practice unlawful discrimination against complainant Western Pacific in violation of Sec. 3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *west* of the Cascade Mountains on the same level and basis as said defendant presently maintains in connection with Southern Pacific Company in the same territory.

10. That defendant Northern Pacific has practiced and continues to practice unlawful discrimination against complainant Western Pacific in violation of Section 3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *east* of the Cascade Mountains, not reached by the direct service of Great Northern, on the same level and basis as said defen- [fol. 731] dant presently maintains in connection with Southern Pacific Company in the same territory.

11. That defendant Union Pacific has practiced and continues to practice unlawful discrimination against complainant Western Pacific in violation of Section 3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *west* of the Cascade Mountains on the same level and basis as said defendant presently maintains in connection with Southern Pacific Company in the same territory.

12. That defendant Union Pacific has practiced, and continues to practice unlawful discrimination against complainant Western Pacific in violation of Section

3 (4) by virtue of its failure and refusal to join said complainant in the publication of through rates to or from the territory *east* of the Cascade Mountains, not reached by the direct service of Great Northern, on the same level and basis as said defendant presently maintains in connection with Southern Pacific Company in the same territory.

13. That practices here complained of have caused complainant to suffer irreparable injury and have enabled complainant's principal competitor to enjoy an unwarranted, unfair and unlawful competitive advantage.

14. That defendant Northern Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes [fol. 732] available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *west* of the Cascade Mountains in the States of Oregon and Washington.

15. That defendant Northern Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *east* of the Cascade Mountains, not reached by the direct service of Great Northern, in the States of Oregon, Washington, and western Idaho.

16. That defendant Union Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *west* of the Cascade Mountains in the States of Oregon and Washington.

17. That defendant Union Pacific be ordered to cease and desist from its present practice of unlawfully discriminating in the level of rates which it makes available to the Southern Pacific Company, and the Bieber route via Portland to and from points on its lines located *east* of the Cascade Mountains, not [fol. 733] reached by the direct service of Great Northern, in the States of Oregon, Washington, and western Idaho.

Respectfully submitted,

Walter G. Treanor, 526 Mission Street, San Francisco 5, California, Attorney for Complainants.

[fol. 734] Certificate of Service (omitted in printing).

[fol. 735]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF UNITED STATES FOR LEAVE TO INTERVENE FOR THE PURPOSE OF PETITIONING THE FULL COMMISSION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2 AND TO BE HEARD ON ORAL ARGUMENT—Filed July 26, 1963

Comes now the petitioner, United States of America, through Department of Justice, and respectfully represents that it has an interest in the matters presented in the above-entitled proceeding and desires to intervene in and become a party to said proceeding for the purpose of petitioning the full Commission for reconsideration of the Report and Order of Division 2 and for the purpose of being heard on oral argument herein, if the same should be granted; that good cause exists for the granting of the intervention sought; and that, if leave to intervene is

granted petitioner, no broadening of the issues will thereby result. In support whereof petitioner further states as follows:

[fol. 736] 1. That petitioner had no knowledge of this proceeding, a private proceeding upon complaint between private persons, until the same was brought to its attention following the Commission's determination and announcement that it involves an issue of general transportation importance.

2. That the position of petitioner is in support of the relief sought by complainant, Western Pacific Railroad Company, under section 3(4) of the Interstate Commerce Act.

3. That the United States has a direct interest, in its sovereign capacity as well as that of shipper, in the preservation of competition to the extent necessary to assure the sound development of a transportation system by railroad properly adapted to the needs of the commerce of the United States, of the postal service, and of the national defense; and in the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices.

4. That the Report and Order of Division 2 would perpetuate, by finding the Commission to be lacking in power to correct, a monopoly position enjoyed by intervenor, Southern Pacific Railroad Company, through the actions of the principal defendants Northern Pacific Railway Company and Union Pacific Railroad Company, in rail transportation between points in California and points on the defendants' lines in the Pacific Northwestern States of Oregon, Washington, and Idaho, via the Portland gate-[fol. 737] way, in that the said Report and Order specify, as the reason the discrimination cannot be eliminated and the monopoly broken, the very device which has made this monopoly position possible, namely, defendants' long-standing refusal to accord to Western Pacific and its connecting lines the same basis and level of rates via the Portland gateway as they accord intervenor Southern Pacific.

5. The petitioner, for the reasons set out in its accompanying petition to the full Commission for reconsideration of the Report and Order of Division 2, believes that the grounds which Division 2 advanced to support this result are erroneous, would frustrate preservation of competition to the end of sound development of a transportation system by railroad adapted to the needs of commerce and the postal service and national defense, and would, contrary to the policy of section 3(4), prevent the establishment and maintenance of reasonable charges for transportation, free of unjust discriminations, undue preferences or advantages, and unfair and destructive competitive practices; and believes that it is therefore essential that the full Commission reconsider said Report and Order.

6. That petitioner is advised that following issuance of said Report and Order, which, *inter alia,* suggested that there is no substantial shipper interest in the relief sought, over 100 requests have been filed with the carrier freight rate bureaus seeking voluntary publication of rates to [fol. 738] apply over the Bieber route via Portland, Oregon, to and from points on the lines of defendants Northern Pacific Railway Company and Union Pacific Railroad Company north and east of Portland.

7. That insofar as petitioner can ascertain the Commission has not previously passed upon the principal ground on which Division 2 has based its decision, namely, that a carrier by railroad is not a "connecting line" of another which it reaches via an intermediate carrier, within the meaning of section 3(4) of the Act, unless there is in effect a "through route" between such carrier by railroad and the carrier it reaches via the intermediate line.

8. That the accompanying petition to the full Commission for reconsideration of the Report and Order of Division 2 is addressed solely to the issues framed by the Report and Order and does not in any way broaden them.

Wherefore, the United States of America requests leave to intervene and be treated as a party hereto, and to file the accompanying petition to the full Commission for recon-

sideration of the Report and Order of Division 2, and, in the event the Commission grants oral argument, to be heard at such oral argument.

John H. Dougherty, Attorney, Department of Justice;

Robert L. Wright, Acting Assistant Attorney General, Department of Justice;

Joseph J. Saunders, Attorney, Department of Justice.

July 26, 1963

[fol. 739] Certificate of Service (omitted in printing).

[fol. 740]
[Handwritten notation—Received July 26th. See Order of 8/9/63]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF UNITED STATES TO FULL COMMISSION FOR RECONSIDERATION OF REPORT AND ORDER OF DIVISION 2 AND REQUEST OF UNITED STATES FOR ORAL ARGUMENT BEFORE FULL COMMISSION—Filed July 26, 1963

The Report and Order of Division 2 herein served August 2, 1962, deny complainant Western Pacific Railroad Company relief under section 3(4) of the Interstate Commerce Act against the practice of the principal defendants Northern Pacific Railway Company and Union Pacific Railroad Company of withholding from Western Pacific joint rates to apply between points in California served by Western Pacific or in connection with the Atchison, Topeka & Santa Fe Railway Company, via the Portland gateway, and points on the lines of those defendants in Oregon, Washington and Idaho, on the same basis as those defendants maintain via Portland in connection with intervenor

Southern Pacific Company. Thus they condone an anti-competitive practice which has existed since the opening [fol. 741] in 1931 of the Bieber route, composed of the lines of Western Pacific, the Santa Fe to the south, and Great Northern Railway Company to the north, of which the Commission authorized construction in *Great Northern Railway Company Construction,* 166 I.C.C. 3, in the stated expectation that the new inside gateway would be competitive with Southern Pacific between San Francisco and Portland, and frustrate that expectation by barring competition between Western Pacific and Southern Pacific for traffic moving between California at a Bieber route origin or destination and points on the lines of these defendants in the Pacific Northwest. The defendants' joint rates with Southern Pacific are in virtually all instances lower than the combination rates which apply when they or Southern Pacific participate in a routing with Western Pacific via the Bieber route to or from these points on their lines.

Except as to traffic between California and Great Northern points east of the Cascade Mountains, which the Bieber route can move faster and more directly via Wishram, Washington, the repressive influence of this decision extends throughout a great area of the West. The Northwest area involved is that north of the Portland interchange and includes important points such as Bellingham, Everett, Seattle, Tacoma, Olympia, and Longview, as well as others, and the area east of the Cascade Mountains which includes points north and east of Wishram such as Yakima, Walla Walla, Spokane, and numerous others. As Division 2 recog- [fol. 742] nizes, the Pacific Northwest and California have rapidly increased in population, consumption and production and are expected to continue to grow. There is testimony that through routes between defendants and the Bieber route and rates at the same level as those defendants maintain with Southern Pacific would materially assist in the greater industrial development of the Pacific Northwest, provide for a greater and more complete competitive rail system, and generally assist in the economic growth of the whole area. Division 2, which cites this testimony, does not dispute it. Likewise, to shipper urgings that such routes and rates would give them more freedom of choice in the movement of their goods, would improve

transportation service, time in transit and car supply, and make available additional transit privileges, Division 2's response is only that nothing of record indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. It found corroboration in the failure by shipper witnesses for 31 years to initiate a determined campaign for the routes and rates sought. Even the latter observation is no longer valid; since the Report and Order were issued, there have been over 100 requests from shippers filed with the carrier rate bureaus for voluntary publication of the rates Western Pacific seeks to force through its complaint.

The concern of the United States is as much with the method by which Division 2 arrived at this unfortunate result as with the result itself. For Division 2 never really [fol. 743] reached the merits, and they urgently require the most careful consideration. The principal obstacle Division 2 placed in the way of the complaint is the first and most important point it decided, namely, that Western Pacific is not a "connecting line" of the defendants within the meaning of section 3(4) of the Interstate Commerce Act and is therefore without standing to complain of the discrimination in rates which Division 2 freely finds defendants have practiced against Western Pacific in order to keep the Bieber route commercially closed. The method employed, that of piecing together selected portions of judicial decisions, each sound in its own setting but having no relation to one another, has already been rejected as a justification of rate discriminations practiced by rail carriers against water carriers, but appears not to have been considered in a complaint by one rail carrier against another. Since it achieves an artificial distortion of section 3(4) which would advance the very kind of monopolistic combination that section has long been recognized as prohibiting, petitioner believes it to be of utmost importance that the full Commission reconsider the Report and Order.

Again, on the contrary assumption that section 3(4) is applicable, "Division 2 has held that the circumstances and conditions are dissimilar, so that the admitted discrimination is justified. In so doing it adopted a rule of measurement, a comparison of the relative physical features of the Bieber route and the Southern Pacific route

[fol. 744] between California and Portland, which should be left for the shipping public to judge under freedom of selection which it thereby foreclosed."

Finally, Division 2 chose to ignore Western Pacific's reliance solely upon section 3(4) and treated the case as if it were still being asked to prescribe through routes with the result that it gratuitously found relief foreclosed under the short-haul restriction in section 15(4) of the Act by the same short-haul defendants have seen fit to submit to voluntarily in connection with Southern Pacific.

Petitioner sets out in succeeding sections of this petition its reasons for believing that Division 2 erred in each of these three findings and that each should receive full reconsideration by the full Commission.

[fol. 745]

I

The Commission should find Western Pacific is a "connecting line" of the defendants

The *fact* which has led Division 2 to conclude that Western Pacific is not a "connecting line" which can complain under section 3 (4) against defendants' withholding of joint rates via Portland on the same basis and level as they have always extended to Southern Pacific is the withholding itself. *Chicago, I. & L. Ry.* v. *United States,* 270 U.S. 287, is decisive that the *fact* that defendants have always shunned any arrangement for a through transportation service jointly with Western Pacific cannot deprive Western Pacific of standing under section 3 (4) as a "connecting line." There all four respondents had arrangements for reciprocal switching with each other but three of them refused to switch reciprocally with the complainant electric line—just as defendants here refuse to make joint rates with Western Pacific. The complainant had a physical connection only with the first respondent, with whom it had already obtained reciprocal switching arrangements, and not with the three others, whose lines its cars could reach only by passing over the line of the first defendant—just as Western Pacific reaches defendants here only over the line of the Great Northern. Nevertheless, the court held these respondents had violated their duty under section 3

(4) to afford equal facilities for interchange of traffic with [fol. 746] "connecting lines." In so doing it noted specifically that "no joint service is being rendered by the three steam railroads with the South Shore"—just as no joint rates are now in effect between defendants and Western Pacific.

The *legal* process by which Division 2 reached the conclusion that Western Pacific was not a "connecting line" of the defendants took as its point of departure a quotation from *Atlantic Coast Lines* v. *United States,* 284 U.S. 288 (at page 293): "There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a *through route.*" [Emphasis supplied] From this quotation Division 2 concluded that since it was the Great Northern and not the Western Pacific which physically connected with the defendants at Portland, Western Pacific could be a "connecting line" of the defendants only if Western Pacific and the Great Northern *and* the lines of the defendants north and east of Portland *together* constituted "through routes." It then took a quotation from *Thompson* v. *United* [fol. 747] *States,* 343 U.S. 549,[1] as determinative of whether such a through route existed between the Bieber Route and the defendants. The portion of this quotation (at page 557)

---

[1] This quotation was as follows (the indented portion being from the Commission's 21st Annual Report to Congress):

". . . Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.

"In short, the test of an existence of a through route is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service." [343 U.S. at p. 557].

which it treated as decisive states that the test of the existence of a "through route" is "whether the participating carriers *hold themselves out* as offering through transportation service." [Emphasis added]

This reasoning fore-ordained Division 2's conclusion. For the defendants had never held themselves out to offer through transportation with the Western Pacific; their refusal to do so and preference of Western Pacific's competitor, Southern Pacific, is precisely Western Pacific's complaint. The very few joint rates in existence were forced on the defendants in two of the four cases in which they came into being and by Commission decree in the other two. Of these joint rates only the rate on pipe had ever been used, and only an exceedingly small quantity of pipe traffic had moved under that rate. Even less traffic had moved under combination rates. All such traffic was an insignificant portion of the whole. Finding that, as in *Beaman Elevator Co.* v. *Chicago & Northwestern Ry. Co.*, [fol. 748] 155 I.C.C. 313; *Denver & R. & W. R. Co.* v. *Union Pacific R. Co.*, 351 U.S. 321; and *Chicago, M., St. P. & P. R. Co.* v. *Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453; these limited movements were not enough to show the defendants "hold themselves out" with Western Pacific for carriage via the Bieber route, Division 2 concluded there are no "through routes" in effect between the defendants and Western Pacific; hence, Western Pacific is not a "connecting line" of the defendants.

On this reasoning a carrier which has physical facilities to handle traffic with a distant line which reaches it by an intermediary line but chooses to favor the distant line's competitor may take the disadvantaged line entirely out of the protection of section 3 (4) by consistent and effective adherence to a refusal to deal.

Atlantic Coast Line v. *United States* could have led Division 2 to the reverse conclusion, even on its "through route" requirement, had it chosen to stress the sentences immediately preceding the portion it quoted. These sentences would have allowed it to bring Western Pacific within the "through route" definition of the *Thompson* case. The

analogy they suggest, more readily than a "through route" composed of Western Pacific and defendants, is a "through route" composed of Western Pacific and its Bieber route partners—particularly Great Northern, the intermediate carrier between Western Pacific and defendants. In these sentences the Court said (at p. 293):

> The plaintiffs contend that the restrictive schedules [fol. 749] are consistent with the conditions because the Georgia & Florida is not a carrier "connecting with the Clinchfield." The argument is that the Georgia & Florida does not connect, since its own rails do not physically abut on the Clinchfield's rails—*the connection being made over the Piedmont & Northern, an intermediate carrier.* [Emphasis added]

Division 2 did not choose this alternative, however. Instead it then imported into section 3 (4) a concept of "through route" which has nothing to do with discrimination between connecting lines under that section, although valid in the unrelated context from which Division 2 took it. *Denver & R. G. W. R. Co.* v. *Union Pacific R. Co.*, 351 U.S. 321, 330. That context is the limitation in section 15 (4) upon the Commission's power to establish through routes and joint rates under section 15 (3). Section 15 (4) prohibits the Commission from establishing any "through route" under section 15 (3), with exceptions not material here, if any carrier which would participate in the through route would thereby be required to "short haul" itself, i.e., "to embrace in such route substantially less than the entire length of its railroad."

In the *Thompson* case and others Division 2 relied on, carriers challenged joint rates the Commission had ordered established, claiming that in establishing these joint rates the Commission really had established through routes where none had existed before which required them to short haul themselves. Involved in these cases is the right of the carrier to retain its own long haul. The carrier can protect this right by declining to enter into joint relationships

with a connecting line which whatever their form would [fol. 750] amount to an offer by both of a through transportation service over the lines of each. These cases thus turned on whether such a "through route" had already been established between the resisting carriers and those with whom the Commission had ordered them to enter into joint rates, *by their own actions;* if so, the short haul restriction on the Commission's power to establish the through route by *its own act* did not come into play.

The carrier can waive its right to the long haul if it so chooses, for the short haul restriction is only a limitation on the exercise of one particular power by the Commission. In countless instances carriers have done so, including this case.[2] Protection of the railroads against being short hauled involuntarily in a Commission-made through route rests on a settled policy of Congress that such protection is in the national interest. Despite urging from the Commission to repeal the short haul restrictions because they pro- [fol. 751] duce inefficient and wasteful transportation, Congress has adhered to this policy with but slight relaxation since 1910. See *United States* v. *Mo. Pac. R. Co.*, 278 U.S. 269; *Stickell & Sons* v. *Western M. Ry. Co.*, 153 I.C.C. 759; *Thompson* v. *United States*, 343 U.S. 549, 554-56. But the policy represents only a restriction on one governmental power, not an endorsement of private acts. Evidence that

---

[2] Union Pacific shorthauls itself between Los Angeles and Portland by joining in through rates and routes with Southern Pacific via Portland. Union Pacific and Northern Pacific short haul themselves between Portland and Bend, Oregon, about 246 miles, by joining in through rates and routes with Southern Pacific via Portland. Union Pacific's line to Bend parallels that of the Spokane, Portland & Seattle Railway Co., and subsidiaries used by Northern Pacific. Interchange at Bend would in each case result in a through route with the Bieber route lines. This is the same short haul that Division 2 says defendants would suffer under joint rates with Western Pacific. Northern Pacific also short hauls itself (through a subsidiary) by joining in through rates and routes via Portland rather than Eugene, Oregon. Compare *Atlantic Coast Line R. Co.* v. *Seaboard Air Line R. Co.*, 286 I.C.C. 669, at p. 675.

a carrier has refrained from establishing relationships with another which expressly or impliedly amount to a joint offer by both of a through service over their respective lines goes only to the question whether a Commission-ordered through route is really being required against the will of the resisting carrier because the short haul restriction on the Commission's power to open a route does not apply if that carrier has in fact or in law already opened the route itself. The resolution of this issue of prior acquiescence on the part of the resisting carrier is all the definition of "through route" in the cases cited by Division 2 stands for.

These cases do not decide whether the resisting carrier discriminated against connecting lines by shunning them; nor that rail carriers who in the self-interest of one or both or all of them have not formed a through route with one another are not connecting lines simply because they have refrained from forming a through route; nor that they cannot be connecting lines unless they do form a through route. Logically, no such decision is possible. Rail carriers have to connect with one another to be able to arrange themselves into a through route. Whether they form them-
[fol. 752] selves into a through route—whether they "hold themselves out as offering through transportation service" —they still connect. This seems self-evident. So far as can be discovered, it has always been assumed. Thus, in 1907 the Commission, in *Through Routes and Through Rates*, 12 I.C.C. 163, said (at p. 166):

> A through route is a *continuous line of railway* formed by an arrangement, express or implied, between *connecting carriers*. It must have a rate for every service it offers, and, as the route is a new unit—one line formed of two or more *connecting lines*—so its rate for every service is a unit, even though it be divided between the several carriers arranging themselves into the through route. [Emphasis added]

Even in the main case on which Division 2 relied, *Thompson* v. *United States, supra*, the Court said (343 U.S. at pages 556-557):

The statutory term "through route," used throughout the Interstate Commerce Act, has been defined by this Court as follows:

> A "through route" is an arrangement, express or implied, between *connecting railroads* for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. [Emphasis added][1]

The prohibition against a carrier discriminating between its connecting lines rests on an entirely distinct policy which Congress has adhered to without deviation since 1887 and has even tightened. That policy commands carriers to ac- [fol. 753] cord equal treatment in rates to all connecting lines similarly situated. The same aloofness which may save a carrier from submitting to an involuntary short haul in a Commission-ordered through route may be discrimination in rates if the carrier extends to one connecting line a system of rates which it withholds from another line to which the carrier could accord the same or substantially similar treatment. If the defendants accorded Western Pacific *joint* rates, thus forming a "through route" between themselves and Western Pacific, but at a level higher than the rates they accord the Southern Pacific, than even under Division 2's decision Western Pacific would have standing as a "connecting line" under section 3 (4) to complaint of the discrimination in rates. The effect of Division 2's decision is to take the case out of section 3 (4) entirely if the defendants' differing treatment of Southern Pacific and Western Pacific takes the harsher form of refusal to join with Western Pacific in any rates at all.

No purpose so radically to narrow the scope of section 3 (4) can be gathered from the unqualified term "discriminate in their rates." To the contrary, section 3 outlaws discrimination "in all its forms." *Dixie Carriers* v. *United*

---

[1] See also *St. Louis Southwestern Railroad Company* v. *United States*, 245 U.S. 136 at p. 139, n. 2.

States, 351 U. S. 56, 60. The result Division 2 has reached by piecing together quotations from judicial decisions, each sound in its own context but unrelated to one another, achieves an artificial distortion of section 3 (4) which would condone and encourage the very kind of monopolistic combination which this Commission long ago said that section [fol. 754] 3 (4) aimed at outlawing. In *N.Y. & N.R. Co.* v. *N.Y. & N.E. R.*, 3 Inters. Com. Rep. 542, decided in 1891, the Commission said (at pp. 547-48, 550):

> The exact question presented in this case seems to be whether a common carrier subject to the provisions of the Act to Regulate Commerce which affords facilities for the interchange of traffic to a connecting common carrier extending beyond its own line, upon an adjustment of through rates than the sum of the local rates on the two lines, can refuse to afford like facilities for interchange of traffic and a like adjustment of rates to another connecting common carrier reaching the same ultimate destination and a competitor in business with the first connecting carrier, all the carriers being engaged in the transportation of interstate commerce and subject to the Act—in other words, whether in such a case a discrimination in affording facilities for the interchange of traffic and in rates and charge between the respective connecting carriers can lawfully be made. This inquiry involves an interpretation of the second clause of the third section of the Act to Regulate Commerce.[4]
>
> • • • • • • •

[4] The provision which is now section 3 (4) of the Act then read as follows:

> Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

> When, therefore, the Statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment.

[fol. 755] Division 3 and the full Commission have rejected the argument that the term "connecting line" in section 3 (4) is limited to lines which either physically connect with one another or jointly participate in through routes. To require through routes, Division 3 rightly said in *Sioux City & N. O. Barge Lines* v. *C. & N. Ry. Co.*, 303 I.C.C. 537, would leave section 3(4) extremely limited in scope. The full Commission, in *American Barge Line* v. *A.G.S. R. Co.*, 306 I.C.C. 167, reluctantly but explicitly held that barge lines must be treated as "connecting lines" of the defendant rail carriers even where there were no physical transportation facilities to form the connection, and was sustained, almost summarily, by a three-judge court in *A., T. & S. Fe Ry.* v. *United States*, 194 F. Supp. 438. Earlier in the same proceeding, in *American Barge Line* v. *A. G. S. R. Co.*, 303 I.C.C. 463, the full Commission had also found that the barge lines had no arrangement with the rail carriers for continuous carriage of the commodity involved. One may fairly take the full Commission's *American Barge Line* decisions as embodying its rejection of either physical connection or joinder in through routes as essential to "connecting line" status.

There apparently having been no Commission or court decision which passes upon the "through route" requirement, applied, as here, to a claim that one rail carrier is discriminating in rates against another, there may remain a question whether rail-versus-rail is distinguishable from

these decisions. Division 2 may have thought so because these decisions and the authorities on which they rely [fol. 756] stress the Congressional direction to the Commission in the Transportation Act of 1940 to administer the Act so as to preserve the inherent advantage of lower cost of water transportation and because the 1940 Act singled out water transportation for separate mention in the final sentence of section 3 (4): "As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

Neither consideration, however, can support such a distinction. In the authorities cited in the decisions just mentioned, which begin with *I.C.C.* v. *Mechling,* 330 U.S. 567; and include *James McWilliams Blue Line* v. *United States,* 100 F. Supp. 66 (affirmed on motion, 342 U.S. 951); *Dixie Carriers* v. *United States,* 351 U.S. 56; and *Arrow Transportation Co.* v. *United States,* 176 F. Supp. 411 (affirmed 361 U.S. 353); there is indeed frequent intermingling of the national transportation policy with section 3 (4). But there are also distinct and independent findings of violation of section 3 (4). *Mechling,* at p. 577. *Dixie Carriers,* which includes a clear finding of violation of section 3 (4), explains the intermingling: the rate discrimination against the connecting water carrier not only violates section 3 (4) and is condemned on that account, but, by diverting business away from them, it also violates the national transportation policy by denying water carriers and shippers the inherent advantage of cheaper water transportation. In *Arrow Transportation* the separate finding under section 3 (4) was the main issue, critical to the relief sought; [fol. 757] the court called other phases of the case a "skirmish."

The mention of water carriers separately from rail carriers in section 3 (4) does not justify or require a more restricted application of that section to rail carriers. The parallel mention of rail carriers in the same sentence (and in the corresponding sentence of the counterpart section

305(d) of part III) leaves no basis for supposing that any differing treatment was intended for water carriers. The two are mentioned separately in section 3 (4) only because they are also mentioned separately, but in reverse order, in the same last sentence of section 305 (d). There are these two sections because Congress adopted the House version of the Transportation Act of 1940 and its method of bringing water carriers under regulation. The Senate bill was drafted as a codification of the entire Interstate Commerce Act. See S. 2009, 76th Cong., 1st Sess., print of May 29, 1939, sec. 54(1) at p. 191; H. Rept. 1217, 76th Cong., 1st Sess., pp. 9-10. Provisions common to more than one of the three modes of transportation to be covered frequently appeared in a single section; thus, section 10 (12), corresponding to the present sections 3 (4) and 305 (d), was directed at "All common carriers by railroad and by water." See S. 2009, May 29, 1939 print, at p. 45. The House Committee substituted for this format the present arrangement of the Act, preserving the already existing parts I and II and adding part III. H. Rept. 1217, pp. 9-10. Section 6 (d) was the redrafted section 3 (4); section 305 (d) became the present section 305 (d). See S. 2009, Union Cal. 479, [fol. 758] print of July 18, 1939, pp. 204-05, 253. The committee reports indicate the separate mention of water carriers in section 3 (4) and that of rail carriers in section 305 (d), were but natural cross-references resulting from the extension to water carriers of the duty not to discriminate against connections, in the form in which the House had put the extension, and were intended only to confirm that each mode of carriage should thenceforth enjoy the same protection against the same practice of rate discrimination by the other. See S. Rept. 433, 76th Cong., 1st Sess., p. 14; H. Rept. 1217, pp. 11, 22.

There seems no alternative to the conclusion that Western Pacific is a "connecting line" of defendants, entitled to the protections of section 3 (4), and the full Commission is respectfully urged so to find.

[fol. 759]

II

The Commission should find Division 2 adopted an inadmissible standard by which to measure similarity of circumstances and conditions and should test similarity in terms of the added cost or operating burden upon defendants, if any

While professing to decide that section 3 (4) did not require defendants to accord Western Pacific equal treatment with Southern Pacific because the circumstances and conditions were not substantially similar, Division 2, without acknowledging it did so, adopted arguments the defendants built around a statement by the Commission in the so-called *Ogden Gateway* case that, "A finding of discrimination under section 3 (4) of the Act must be supported by a showing that the transportation conditions are no less favorable over the routes alleged to be discriminated against than over routes said to be preferred." *D. & R. G. W. R. Co.* v. *U. P. R. Co.*, 287 I.C.C. 611, at p. 658. This statement, there addressed without supporting authority to differences in rates through *different* gateways rather than a single gateway such as Portland, may be unsound even in the former context because it would suppress incentive to improve upon or surmount physical and operating handicaps. It cannot be traced back earlier; it was not adopted by the Supreme Court when it affirmed the Commission's order, 351 U.S. 321; and even in the Commission's decision was not the basis on which the Commission also voided discriminatory rates through a single gateway, 287 I.C.C. at pp. 658-59, nor on which the Supreme Court affirmed this action, 351 U.S. at p. 335, n. 7.

[fol. 760] In the present case Division 2 cited longer distances and more difficult operating conditions over the Bieber route lines from California *to Portland* than over the Southern Pacific line from California to Portland. The defendants of course do not perform this leg of the transit. In an extension of the same reasoning, it found that joint rates between the Bieber route lines and the defendants to

apply via Portland could not be put into effect without requiring routings to Portland and beyond which would be more circuitous than routings under the defendants' joint rates with the Southern Pacific, and, unlike the latter, would in some instances necessitate backhauling in a direction opposite to the direct movement. For example, it found that a movement between points in California and points on the Union Pacific east of the Cascades would require a haul by the Great Northern over the SP&S line west from Wishram *to Portland,* opposite to the direct movement, *before the Union Pacific could begin the haul* on its own line east from Portland to destination paralleling the SP&S line. It found the Northern Pacific would have to route such a movement via its Auburn line, which is 368 miles longer to Spokane and a more difficult transit than the SP&S direct route via Wishram. It found that movements to Union Pacific and Northern Pacific points would require a bridge crossing *by Great Northern* from Vancouver south to Portland which each defendant would duplicate on beginning the haul to destination. And it found that the switch at Portland *before Union Pacific began its haul* would cost the Union Pacific $3.69 per care as against a [fol. 761] cost of $46.88 per car for switching in interchange with the Southern Pacific.

Western Pacific disputes many of these findings, such as the supposed necessity of routing via Auburn (which it says would be a further and needless discrimination) and the claimed disparity in switching costs (which it says represent the fully distributed cost of operating the terminal company in the one instance as against only the direct cost of the switch train crew in the other). More important than these disputes, which we think the full Commission certainly should resolve, is the premise, drawn from the quotation from the *Ogden Gateway* case, that the validity of the discrimination which the defendants practice against Western Pacific may be permitted to depend upon adverse transportation conditions the traffic may encounter *before it reaches the line of either defendant* rather than upon

more costly or more difficult transportation conditions the defendants themselves would encounter after their responsibilities as common carriers had begun. Granted that section 3 (4) require equality between connecting lines only under substantially similar circumstances and conditions, the Commission and courts have held that a discrimination in rates, competitively motivated, may not be founded upon conditions surrounding the prior transportation which have no adverse effect upon the discriminating carriers. Assuming the correctness of Western Pacific's view of the disputed findings, there is no instance in which the defendants would be required to perform a substantially different or [fol. 762] more costly or any longer transportation service *on their lines* in connection with the Bieber route at Portland than in connection with the Southern Pacific; the routings and defendants' transportation would be the same in either case. Assuming correctness of Division 2's view, it should be for the public not the defendants to evaluate any physical inferiorities of the Bieber route, and to be free to do so under freedom of selection which the defendants have always withheld through their discriminatory rate structure.

In *I.C.C.* v. *Mechling, supra,* the discrimination rested upon the fact that the traffic against which the discriminatory rates were directed originated with competitive barge lines; the Court held that section 3 (4), as well as other provisions of the Act, flatly forbade the rail carriers from charging more for carrying grain delivered to them by barge than for carrying grain delivered by rail or lake carrier unless it *cost the rail carriers* more to haul the ex-barge grain than to haul the ex-rail or ex-lake grain. 330 U.S. at p. 577.

Here the discrimination, although rationalized in terms of supposedly more favorable physical conditions on the line of the Southern Pacific, admittedly rests on the fact that the traffic originates with Southern Pacific's competitor, Western Pacific.

As in *Mechling* this is not the dissimilarity in conditions and circumstances which can justify discrimination in rates between connecting lines. Long ago, again in *N.Y. & N.R. Co.* v. *N.Y. & N.E. R., supra,* the Commission said the same [fol. 763] thing (3 Inters. Com. Rep. at p. 550):

> This principal of equality in facilities and rates applies obviously where the conditions for interchanging with the respective connecting carriers are substantially equal. If these conditions are materially different, the dissimilarities created by the facts themselves may justly vary the application of the principle to correspond with the actual condition. Discrimination occurs when a difference is made between connecting lines similarly situated. A difference founded on actual dissimilarities in the service, or in the convenience of interchange, and adapted to the difference in circumstances, is not discrimination. But a dissimilarity of this nature *arises from physical conditions and not from business motives,* and the discrimination made must be no greater than the different conditions will justify. [Emphasis added]

In *Chattanooga Packet Co.* v. *I.C.R. Co.,* 33 I.C.C. 384, the Commission stated (at pp. 391, 392):

> Plainly by these provisions the only difference which carriers can make in the treatment of their connections is such as can be justified by differences in the conditions and circumstances surrounding the service rendered. By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in the one case than in the other.
>
> * * * * * * *
>
> The fact that the proportional rates to and from the Ohio River [complained of] are compelled by competi-

tion can have no bearing upon our determination of the issue of unjust discrimination. The "like circumstance and conditions" referred to in section 2 of the Act are those which arise within the field of haulage, and do not include competition.

Western Pacific is not asking for the prescription of through routes or joint rates, but for an order directing [fol. 764] defendants to end a discrimination which prevents full utilization of the Bieber route and deprives the public of freedom of selection. Nor is it asking for fourth section relief. Were these the case, the physical deficiencies Division 2 finds a bar to relief might be relevant. But even then Division 2's decision would be difficult to reconcile with *Pacific Coast Fourth Section Applications,* 190 I.C.C. 273. There Division 2 as then constituted found it to be in the public interest to allow Western Pacific to maintain the same level of fourth section rates as it had previously allowed Southern Pacific to maintain, for the purpose of meeting water competition. It did so despite an extensive detailing of the same longer distances and higher percentages of circuity over the Bieber route *between California and Portland* which the present Division 2 finds fatal to Western Pacific's relief under section 3 (4). It has already been seen that the operating routes *of the defendants* would be no longer in connection with the Bieber route through Portland than in connection with the line of the Southern Pacific through Portland. It is safe to venture that under these circumstances the Commission is not to administer the Act so as to foster competition between rail carriers and a water carrier, but supress competition between the same rail carriers.

III

The Commission should find that Division 2 erred by finding the short-haul restriction precluded the relief sought

Division 2 treated the case as if Western Pacific was still asking the Commission to prescribe through routes and

[fol. 765] joint rates with the defendants and held that as the routes sought would require the defendants to interchange traffic with the Great Northern at Portland, both defendants would be short-hauled from Bend (between Bieber and Wishram) to Portland, a distance of 246 miles, in violation of section 15 (4). Western Pacific having abandoned its prayers for the prescription of through routes and joint rates under section 15 (3) after the hearing (as well as its complaint under section 1 (4)), the issue before Division 2 was only whether the defendants are discriminating against Western Pacific in violation of section 3 (4). Had Division 2 found discrimination it would have ordered the defendants to end it. In that event the initiative as to the various means open to abate the discrimination would have lain with the defendants. The injection of the short-haul restriction from section 15 (4) into a case which did not require Division 2 to prescribe a through route under section 15 (3) denied relief Division 2 could have granted under section 3 (4) on a consideration having no relevance to the granting of that relief. That this was erroneous is demonstrated by *A., T. & S. Fe Ry.* v. *United States, supra* (194 F. Supp. at p. 444):

> If relief is necessary to cure a discrimination against water transportation in violation of some provision of the Interstate Commerce Act, 49 U.S.C.A. § 1 *et seq.*, there is no requirement, as a condition of relief, that the barge lines be parties to "through routes" or *that the Commission make a finding under either Sections 15(3) or 307(d) of the Act. Nor does Section 4 of the Act impose a condition on the power of the Commission to act.* The Commission is empowered by the Act to grant relief in such form as is required to remedy the violation of Section 3(4). [Emphasis added]

[fol. 766] Wherefore, the United States of America requests the full Commission to reconsider the Report and Order of Division 2 and to grant Western Pacific Railroad

Company the relief under section 3(4) of the Interstate Commerce Act for which it prays.

John H. Dougherty, Attorney, Department of Justice;

Robert L. Wright, Acting Assistant Attorney General, Department of Justice;

Joseph J. Saunders, Attorney, Department of Justice.

Date: July 26, 1963.

[fol. 768]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF INTERVENER SOUTHERN PACIFIC COMPANY TO PETITION OF DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE FOR THE PURPOSE OF PETITIONING THE FULL COMMISSION FOR RECONSIDERATION OF THE REPORT AND ORDER OF DIVISION 2 AND TO BE HEARD ON ORAL ARGUMENT—Dated and Served August 1, 1963

Comes now intervener Southern Pacific Company and replies to the petition of the United States Department of Justice for intervention in this proceeding.

Preliminary Statement

This proceeding was commenced on February 10, 1961, with the filing of a complaint by Western Pacific Railroad Company and its wholly-owned subsidiaries, charging that the Union Pacific Railroad Company and Northern Pacific Railway Company had violated sections 1(4) and 3(4) of the Interstate Commerce Act. Hearings were held in San

Francisco, Calif., from May 8 to 10, 1961. Briefs were thereafter filed, and on August 10, 1961, the examiner's recommended report and order was served. Thereafter [fol. 769] exceptions to said proposed report were taken and replies were filed. Division 2 of the Commission, in a report and order served August 2, 1962, found no violation of the Interstate Commerce Act and ordered the complaint dismissed. Complainants thereafter filed a petition for reconsideration of the report and order of Division 2, and, after replies were filed by defendants and intervener Southern Pacific Company, said petition for reconsideration was denied on January 18, 1963. Thereafter complainants filed a petition January 30, 1963, seeking a finding that an issue of general transportation importance was involved in this proceeding. By order dated February 14, and served February 20, 1963, the Interstate Commerce Commission granted said petition and designated this proceeding as one involving an issue of general transportation importance. This Commission further ordered that petitions for reconsideration might be filed within thirty days after the date of service of said order. On March 21, 1963, complainants filed a petition for reconsideration by the full Commission and request for oral argument. Replies to said petition were filed on April 29, 1963, by defendants and intervener Southern Pacific Company. By order dated July 12, 1963, and served July 30, 1963, the entire Commission denied said petition for reconsideration and request for oral argument.

The Petition for Leave to Intervene Is in Violation of the Commission's General Rules of Practice and Should Be Denied

Petitioner states at page 2 of its petition for leave to [fol. 770] intervene:

> "1. That petitioner had no knowledge of this proceeding, a private proceeding upon complaint between

private persons, until the same was brought to its attention following the Commission's determination and announcement that it involves an issue of general transportation importance."

As previously pointed out, the order of this Commission declaring this proceeding to be of general transportation importance was made public on February 20, 1963. Petitioner does not disclose the exact date after the issuance of that order that this proceeding came to its attention. It is, however, the fact that petitioner has had knowledge of this proceeding since at least May 10, 1963. Petitioner gives no explanation as to why its petition for leave to intervene was not filed in the approximately two and one-half month period prior to the July 30, 1963, service date of the order of the full Commission denying complainants' petition for reconsideration and request for oral argument.

Rule 1.72(b) of the General Rules of Practice of the Interstate Commerce Commission, which rule governs petitions for interventions, states:

"(b) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after except for good cause shown."

It is clear that not only has petitioner not filed its petition for leave to intervene within the time required by the Rules of Practice, but actually filed its petition for leave to intervene only two business days prior to the making public of the order of the full Commission denying [fol. 771] complainants' petition for reconsideration and request for oral argument. (The order was actually made on July 12, 1963.)

No reason was given in said petition as to why petitioner did not file earlier inasmuch as it had knowledge of said proceeding for two and one-half months.

It is submitted that under these facts petitioner has utterly failed to comply with the rules of this Commission

and has failed to show any good cause as to why its petition should now be granted.

The True Reason for the Filing of a Petition for Leave to Intervene at This Stage of the Proceeding

Petitions for reconsideration are required under the General Rules of Practice of this Commission to be filed within thirty days after the date of service of a decision or order. Rule 1.101(e) states:

> "(e) *Time for filing.* Except for good cause shown, and upon leave granted, petitions under this section must be filed within 30 days after the date of service of a decision or order."

As pointed out in the preliminary statement, *supra*, the report and order of Division 2 was served on August 2, 1962, or approximately one year ago.

On its face the petition filed herein states that the reason for intervention is for the sole purpose of petitioning the full Commission for reconsideration of the report and order of Division 2, and of being heard on oral argument if the same should be granted. As pointed out in the preliminary statement, *supra*, the complainants in this proceeding have already filed such a petition before the full Commission, and the full Commission has now denied said [fol. 772] petition.

Petitioner herein is asking for relief that at this stage of the proceeding is denied to complainants. If petitioner were allowed to intervene in this proceeding and file a petition for reconsideration, it would be granting to it procedural rights which are unavailable to complainants and furthermore, if allowed, would mean that in any Commission proceeding where a complainant has exhausted its remedies before the Commission it would be in a position to persuade other persons to file a petition for leave to intervene followed by a petition for reconsideration, based upon the same grounds that complainants have already set

forth, argued, and lost. Such a procedure could continue ad infinitum.

The language of the Commission in *Cattle Raisers Assn. v. Chicago, B.&Q. R.R.*, 12 I.C.C. 6 (1906), is appropriate to this proceeding. In that case the Commission said:

> ". . . We feel that when an order has been made the case before this Commission should be treated as closed, and that it ought not to be opened except upon a showing that some wrong or injustice has been or will be effected."

Conclusion

It is submitted that petitioner has failed to show good cause for the waiver of Rule 1.72(b) and the petition for leave to intervene should therefore be denied.

Respectfully submitted,

Thormund A. Miller, Charles W. Burkett, W. Harney Wilson, Attorneys for Intervener, Southern Pacific Company.

San Francisco, Calif., August 1, 1963.

[fol. 773] Certificate of Service (omitted in printing).

[fol. 774]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

PETITION OF UNITED STATES TO FULL COMMISSION (1) TO VACATE ITS ORDER SERVED JULY 30, 1963; (2) TO REOPEN THE PROCEEDING FOR THE PURPOSE OF CONSIDERING PETITIONS OF THE UNITED STATES FILED JULY 26, 1963 AND SUCH RESPONSES THERETO AS MAY BE FILED BY THE PAR-

TIES; (3) TO HEAR ORAL ARGUMENT IF THEN WARRANTED; AND (4) TO ISSUE A DECISION STATING FINDINGS AND CONCLUSIONS AND THE REASONS OR BASIS THEREFOR UPON ALL MATERIAL ISSUES AS WELL AS AN ORDER GRANTING OR DENYING THE RELIEF SOUGHT—August 7, 1963

The Commission's order served July 30, 1963 shows on its face that on July 26, 1963, when this Petitioner filed with the Commission a petition for leave to intervene in this proceeding and with said petition an additional petition for reconsideration by the full Commission of the Report and Order of Division 2, which this Petitioner asked leave to file as an intervenor, the full Commission had already decided, at a general session on July 12, 1963, to deny complainant's earlier filed petition for reconsideration. The Commission's order, although served July 30, 1963, also [fol. 775] shows that the Commission reached this decision without consideration of this Petitioner's petitions filed July 26, 1963. Finally, the Commission's order shows that the only reason the Commission assigned for this decision is: " . . . the reason that sufficient grounds have not been presented to warrant granting the action sought."

The Commission's order was not served on this Petitioner. This Petitioner now respectfully petitions the Commission: (1) to vacate its order; (2) to reopen the proceeding for the purpose of considering this Petitioner's petitions of July 26, 1963 and such responses thereto as may be filed by the parties; (3) to hear oral argument if the Commission should then consider the same warranted; and (4) upon final disposition of the proceeding to issue a decision expressly stating its findings and conclusions, and the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, together with an order granting or denying the relief sought.

In support of the foregoing petition, the Petitioner respectfully states the following:

1. This Petitioner had no knowledge of this proceeding until the same was brought to its attention some months after the Commission designated it as one involving an

issue of general transportation importance. Petitioner in turn decided to seek intervention only after careful study of the Report and Order of Division 2, of the issues of fact and law therein raised, of the disposition Division 2 made [fol. 776] of those issues, and of the positions of the parties.

2. Petitioner's interest in this proceeding, that stated in paragraph 3 of its petition for leave to intervene, is independent of the interest of any of the parties. Petitioner believed that the views offered in the petition for reconsideration tendered with its application for leave to intervene could assist the Commission in reaching a decision more informed than one responsive only to positions advanced by the immediate parties. Petitioner's interest is that the Interstate Commerce Act be administered and enforced so as to foster, insure and preserve that competition within modes of transportation as well as between them which is necessary to achieve the goals of the national transportation policy expressed in the preamble to the Act and to achieve the ultimate objective of the Act—a national transportation system adequate to vital commercial, postal, and defense needs of the nation. Prominent among these goals is the establishment and maintenance of reasonable charges for transportation services, free of unjust discriminations or preferences or destructive competitive practices.

3. Division 2's Report disclosed that defendants, ever since the Bieber route was opened thirty-two years ago, have refused to join with Western Pacific and its Bieber route partners in any system of rates to apply via the Portland gateway between points on their lines and points [fol. 777] served by the Bieber route although they have maintained joint rates via Portland for over fifty years with intervenor Southern Pacific, so that shipments between points on defendants' lines and Bieber route points move only in small volume under combination rates higher (with minor and possibly temporary exceptions) than defendants' joint rates with Southern Pacific.

The Report acknowledged that Western Pacific is fully able to meet any demand for service which might result

from defendants offering Western Pacific rates competitive with their rates with Southern Pacific; acknowledged Western Pacific's inability in most cases to locate industries along its lines except where access is also available through the Southern Pacific to points served by defendants; and acknowledged an annual loss to Western Pacific, because of the lack of competitive rates, of more than 25,000 carloads from industries served by defendants.

The Report acknowledges the vastness and the economic growth and importance of the area throughout which the repressive influence of this practice extends. It does not dispute testimony that elimination of this discriminatory rate pattern would materially assist in the greater industrial development of the Pacific Northwest, would provide for a greater and more complete competitive rail system, and generally assist in the economic growth of the whole area. The Report's only response (and this on the erroneous premise that Western Pacific still sought prescription of through routes) to shipper urgings that elimination of the [fol. 778] discrimination would provide them more freedom of choice of carrier, would improve transportation service, car supply and time in transit, and would make additional transit privileges available, is that there is nothing to show that that service provided by Southern Pacific jointly with defendants is inadequate.

4. But after painstakingly describing defendants' discrimination against Western Pacific and candidly acknowledging its monopolistic effect, Division 2, in the major point it then decided, held that Western Pacific, since it does not reach defendants at Portland directly but does so via the intermediate line of Great Northern, could have standing to complain of this discrimination under section 3(4) as a "connecting line" of defendants only if there were a "through route," which it defined from the irrelevant context of the short-haul restriction in section 15(4), in existence between defendants and Western Pacific—that is, only if defendants had held themselves out jointly with Western Pacific as offering a joint transportation service, precisely what defendants had always refused to do.

5. Petitioner sought intervention not merely because of the unique importance of this proceeding but also because Petitioner believes Division 2's adoption of joinder in "through routes" as essential to status as a "connecting line" under section 3(4) is a self-defeating interpretation of section 3(4) which accomplishes its substantial repeal. If defendants' discrimination had taken the different form of [fol. 779] higher joint rates with Western Pacific than with Southern Pacific, then, under this interpretation, the fact that Western Pacific reaches defendants over an intermediary line would not bar its remedy under section 3(4). But this interpretation permits a carrier by railroad with physical facilities to handle traffic jointly with a distant line which reaches it by an intermediary line to boycott the distant line and discriminate in favor of its competitor with impunity, so long as its refusal to deal with the distant line is unbroken and achieves its purpose. Here this interpretation condones defendants' freely admitted discrimination in rates designed to coerce the public to employ Southern Pacific to the exclusion of its competitor, Western Pacific. It condones a discrimination which deprives Western Pacific of business which the public would give Western Pacific, under freedom of selection. It perpetuates a monopoly in favor of Southern Pacific.

6. This issue and others of large importance with impact upon large segments of the public and a vast area of the country, are presented in this proceeding. Their importance requires that the Commission say how it has resolved them. Moreover, it is for the Commission in the first instance to interpret the Interstate Commerce Act and to say whether its prohibitions have been violated. But to exercise this function the Commission must speak. It cannot act by remaining silent. The brief recitation in its order served July 30, 1963 that "sufficient grounds have not been presented to warrant granting the action sought" affords no [fol. 780] clue what the Commission has decided, or whether the Commission's decision has turned upon issues of fact, or of law, or of matters considered within its discretion. It

cannot even be said what result the Commission has reached, whether it has denied the relief Western Pacific originally sought under sections 1(4) and 15(3) but abandoned after hearing, or only the relief it has always sought under section 3(4).

In fact there appears to be no identifiable decision. Under section 17 of the Act and the Commission's regulations, 49 CFR 1.101, the Report and Order of Division 2 has no administrative finality since this proceeding falls within the provisions of Rule 1.101(a)(2) of the Commission's General Rules of Practice, which excepts from administrative finality orders of a division in any proceeding which the Commission designates as one involving an issue of general transportation importance. The Commission's order served July 30, 1963, however, does not adopt the finding and conclusions of Division 2 as its own. And the order articulates no others. It is predictable that the order served July 30, 1963, or, if it is vacated, such other order as the Commission may enter in this proceeding, will undergo judicial review at the instance of the aggrieved party or parties. The Administrative Procedure Act requires that all decisions include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, [fol. 781] and the appropriate rule, order, sanction, relief, or denial thereof, sec. 8(b), 5 U.S.C. §1007(b), so that the parties and the reviewing court may know precisely what the agency has decided. An ultimate finding, such as that here, that a party has failed to sustain his burden of proof is not enough. *Missouri Pac. R. Co.* v. *United States*, 203 F. Supp. 629. *Cf. Gilbertville Trucking Co.* v. *United States*, 196 F. Supp. 351.

Respectfully submitted,

John H. Dougherty, Attorney, Department of Justice.

Certificate of Service (omitted in printing).

[fol. 783]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO PETITION OF THE UNITED STATES FOR LEAVE TO INTERVENE—Served August 8, 1963

Come now the defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company and reply to the petition of the United States for leave to intervene in this proceeding for the purpose of petitioning the full Commission for reconsideration of the report and order of Division 2 and to be heard on oral argument and state as follows.

[fol. 784]

I.

Petition Not Timely as Required by Rule 1.72(b)

The complaint in the instant proceeding was filed almost two and one-half years ago, on February 10, 1961. Hearing was held on said complaint on May 8-10, 1961, in San Francisco, California. Briefs were filed by all parties and the examiner's proposed report was served on August 10, 1961. After exceptions and replies thereto and oral argument, Division 2 served its report and order on August 2, 1962. Complainants filed their first petition for reconsideration on August 29, 1962, and after replies thereto, it was denied by Division 2 acting as an appellate division on January 18, 1963. Three days later, complainants filed a petition for waiver of the Commission's rules to permit the filing of a petition submitted therewith for a further hearing. Replies were filed thereto. Then on January 30, 1963, complainants filed a petition seeking a finding that

an issue of general transportation importance was involved. On February 14, 1963, the Commission issued its order finding that an issue of general transportation importance was involved. Complainants then filed their second petition for reconsideration on March 21, 1963, and replies thereto were filed by the parties on April 29 and May 13, 1963. By order dated July 12 and served July 30, 1963, the Commission denied complainants' petition of January 21, 1963, for a further hearing, petition of March 21, 1963, for re- [fol. 785] consideration, and request for oral argument on the grounds that sufficient reasons had "not been presented to warrant granting the action sought."

Petitioner has offered no reason for its unprecedented delay other than its lack of knowledge of this proceeding until the Commission's order declaring the same to be a matter of general transportation importance was announced five and one-half months ago. (Pet. Par. 1). Petitioner fails to indicate when and how this proceeding finally came to its attention; why it did not come to its attention earlier, and why it delayed apparently five and one-half months after the matter was called to its attention before filing its petition in intervention.

The Commission's General Rules of Practice, §1.72(b), provide:

> "(b) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after *except for good cause shown.*" (Emphasis supplied)

Petitioner has assigned no cause for a delay of more than two years other than "no knowledge" of the proceeding and no reason whatsoever for a delay of more than five months after the Commission found that an issue of general transportation importance was involved. Manifestly, such an unprecedented delay does not constitute good cause within the meaning of this salutary rule. In order [fol. 786] to constitute *good cause,* exceptional circum-

stances must be shown.[1] Petitioner has simply shown no cause, let alone "exceptional circumstances."

If its petition were granted, the United States would, to all intents and purposes, become a complainant in this proceeding. *Raymond Bag Co.* v. *Atchison, T. & S. F. Ry. Co.*, 196 I.C.C. 487, 488; *Keystone Steel & Wire Co.* v. *Chicago, B. & Q. R. Co.*, 279 I.C.C. 178, 179. A petition in intervention is in the nature of a complaint and entitles the intervenor to the same relief as granted the complainant in the case in which the intervention is filed. *General Motors Corp.* v. *Pennsylvania*, 200 I.C.C. 679. Here, complainants' petition for reconsideration by the full Commission was due March 22, 1963, pursuant to the Commission's order of February 14, 1963, finding that an issue of general transportation importance was involved. Under Rule 1.101, such a petition had to be filed within the 30-day period allowed by this order. Petitioner not only has failed to comply with the order, but, further, has not sought relief from Rule 1.101.

Manifestly, petitioner has not shown good cause for its delay in filing its petition for intervention. Further, even if petitioner were a party to this proceeding, its petition for reconsideration is not timely. Complainants could not at this point file a petition for reconsideration because [fol. 787] such a petition was due on or before March 22, 1963. Petitioner's rights, at best, do not exceed the complainants. Further, petitioner has not sought relief from Rule 1.101.

We submit that not only is the petition for intervention not timely, but, moreover, petitioner, like complainants, is barred at this date from filing a petition for reconsideration. If it were otherwise, the Commission simply could not terminate a proceeding because petitioners in interventions and petitions for reconsideration could be filed ad infinitum. Further, the Commission's order of July 12, served July 30, 1963, concluding this proceeding renders the entire matter moot.

---

[1] See *Hines* v. *Royal Indemnity Company* (CA 6th 1958), 253 F. 2d 111, 114, involving relief from a court rule providing for the recall of a mandate for good cause shown.

II.

Petition Fails to Set Forth Grounds of Proposed Intervention and Its Interest in the Proceeding as Required by Rule 1.72(a)

Paragraph 3 of complainants' petition asserts that the United States has an interest in its "sovereign capacity as well as that of shipper." The petition then summarizes the National Transportation Policy as contained in the Act. While, admittedly, petitioner is interested in having the Commission enforce the National Transportation Policy, this statement does not constitute a declaration of the grounds for intervention or its interest therein as required by the Commission's rule.

[fol. 788] Surely this petitioner does not enjoy any greater rights before the Commission than that of any other party litigant. Manifestly, all parties are equal before the law. While petitioner has set forth its identity, it has not set forth its interest as a shipper nor has it set forth the grounds for the proposed intervention, and, therefore, its petition fails to comply with Rule 1.72(a) and should, for this reason, be denied.

III.

Petition Fails to Comply with Requirement of a Formal Complaint per Rule 1.72(a)

The Commission's rules are specific with respect to the contents of a formal complaint and require that the facts which are claimed to constitute a violation be specified with clarity and in the light of the particular elements stated in the Act. (Rules 1.28 and 1.30). Unless a petition in intervention conforms to these requirements, no relief thereunder can be accorded. *Iola Cement Mills Traffic Asso.* v. *A. V. I. Ry. Co.*, 115 I.C.C. 49, 61; *Alabama Rock Asphalt* v. *Abilene & S. Ry. Co.*, 176 I.C.C. 555, 563. This petition should be rejected because of its patent failure

to comply with these essential provisions of the Commission's rules.

[fol. 789]

IV.

Additional Routes Not Prescribed Because Not Required in the Public Interest

Petitioner erroneously asserts that the Commission found that it lacked power to correct the situation complained of. (Pet. Par. 4). Patently, the Commission has the power under Sections 1(4) and 15(3) of the Act to establish reasonable through routes and joint rates whenever it is "necessary or desirable in the public interest." (Sec. 15(3)).

The complainants, realizing that they failed to establish a case under Sections 1(4) and 15(3) of the Act, abandoned their allegation of a violation of these sections in their complaint and relied solely upon Section 3(4) of the Act. This action on the part of the complainants was tantamount to an admission that the public convenience and necessity did not require the establishment of the sought through routes. Because of the clear absence of public need, the Commission did not order the additional through routes established between the points involved. The Commission simply refused to prescribe additional through routes under Section 3(4) of the Act, as sought by the complainants, because the evidence of record demonstrated that no violation of this section or any other section of the Act had occurred. Petitioner's statement that the Commission found that it lacked power is completely erroneous and misleading.

V.

Paragraph 6 of Petition Seeks to Broaden the Issues and Should Be Stricken

Petitioner asserts that since the issuance of the report and order of Division 2, many requests have been filed by

shippers with the rate bureaus involved seeking publication of joint through rates via the Bieber route. (Pet. Par. 6). This allegation is beyond the scope of the record and, further, is an attempt to broaden the issues in violation of Rule 1.72(c). This paragraph of the petition is squarely in conflict with the opening paragraph and Paragraph 8 of the same petition which state that the petition does not in any way broaden the issues in the proceeding.

Petitioner seeks to go beyond the record by referring to events which occurred more than a year subsequent to the hearing in an attempt to inject an issue under Sections 1(4) and 15(3) of the Act notwithstanding the fact that complainants abandoned their allegation of a violation of Sections 1(4) and 15(3) of the Act following receipt of the examiner's proposed report. Moreover, such evidence was also presented in complainants' petition of January 21, 1963, for a further hearing and denied by the Commission's order of July 12, served July 30, 1963. This paragraph should, therefore, be stricken.

[fol. 791]

VI.

Issues Presented Are Not Sui Juris

Petitioner asserts that the issues presented in this proceeding are *sui juris* and that the Commission has not previously passed upon the complainants' "connecting line" status within the meaning of Section 3(4) of the Act, and, therefore, its petition should be granted.

The issue presented under Section 3(4) of the Act is not *sui juris*. Both the Commission and the courts have held that connecting lines are those which either have a direct physical connection or which make up a through route. *Atlantic Coast Line R. R.* v. *United States*, 283 U.S. 288, 293 (1932). See also *Atlantic Coast Line R. R. Co.* v. *Southern Ry. Co.*, I.C.C. Dkt. No. 31915, and *Atlantic Coast Line R. R. Co.* v. *Southern Ry. Co.*, I.C.C. Dkt. No. 31797, embracing *Atlanta and West Point R. R. Co.* v. *Southern Ry. Co.*, I.C.C. Dkt. No. 31840, decided April 22, 1963.

Finally, complainants' "connecting line" status within the meaning of Section 3(4) of the Act has already been

presented to the full Commission by complainants' petition for reconsideration by the full Commission filed March 21, 1963, and disposed of by the Commission's order dated July 12 and served July 30, 1963, which concluded this proceeding.

[fol. 792] Conclusion

For the reasons stated, the petition of the United States for leave to intervene should be denied because it fails to comply with the Commission's General Rules of Practice and because the matter is now moot due to the Commission's order of July 12, served July 30, 1963, which finally concluded this proceeding.

Respectfully submitted,

Earl F. Requa, Frank S. Farrell.

Due Date: August 19, 1963

[fol. 793] Certificate of Service (omitted in printing).

[fol. 794] Service Date
September 9, 1963.

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.

vs.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

ORDER—August 9, 1963

In the Matter of Petition for Leave to Intervene

Present: Laurence K. Walrath, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, petition filed July 26, 1963, on behalf of United States of America, through Department of Justice, for

leave to intervene for the purpose of petitioning the entire Commission for reconsideration of the Report and Order of Division 2 and to be heard on oral argument, and reply thereto of the Southern Pacific Company filed August 2, 1963.

It is ordered, That the aforesaid petition be, and it is hereby, denied for the reasons that the entire Commission by order dated July 12, 1963, denied complainants' petitions for further hearing, reconsideration and oral argument and the matter is now administratively final and that the contentions sought to be advanced by the United States of America in substance were litigated fully before and considered by Division 2 and the Commission and no apparent good purpose would be served in reopening the proceeding for further consideration of the matter.

It is further ordered, That a copy of this order be served upon each of the parties to this proceeding.

Dated at Washington, D. C., this 9th day of August, A. D., 1963.

By the Commission, Chairman Walrath.

Harold D. McCoy, Secretary.

(Seal)

[fol. 796]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

MOTION OF UNION PACIFIC RAILROAD COMPANY, DEFENDANT, FOR THE INTERSTATE COMMERCE COMMISSION TO DENY OR REJECT THE PETITION OF THE UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE—Served August 9, 1963

The United States of America, through the Department of Justice, filed its petition on or about July 26, 1963, for leave to intervene in the above-entitled proceeding for the

purpose of supporting the complainant, The Western Pacific Railroad Company, by petitioning the entire Commission for reconsideration of the report and order of Division 2.

Rule 1.72(b) of the Commission's General Rules of Practice provides that a petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after, except for good cause shown. The hearing in this proceeding having been held in San Francisco from May 8 to May 10, 1961, it is [fol. 797] incumbent upon the Department of Justice to show good cause for waiver of Rule 1.72(b).

The Department of Justice recites in its petition that it had no knowledge of this proceeding until the same was brought to its attention following the Commission's order of February 14, 1963, designating this matter as one involving an issue of general transportation importance. This is the only explanation for failure to comply with Rule 1.72(b) and is not sufficient justification for a five-month delay in indicating interest in a Commission proceeding that was obviously in its latter stages.

The purpose of the Department of Justice's requested intervention is to file a petition for reconsideration to the entire Commission in support of the position of the Western Pacific. The Commission's order of February 14, 1963—of which the Department concededly had knowledge—provided on its face that petitions for reconsideration were to be filed within 30 days of February 20, 1963. The Department does not attempt an explanation of its failure to petition for intervention or to seek an extension of the terms of this order despite actual notice of the Commission's procedural timetable. The very purpose of the Commission's procedural regulations would be violated by permitting the Department of Justice to intervene at this stage some four months after the time for filing petition for reconsideration and almost one month after the Commission's order finally terminated this proceeding.

[fol. 798] The Western's Pacific's petition for reconsideration was denied by the entire Commission by its order of

July 12, 1963, and to permit the Department of Justice to intervene for the purpose of filing a petition for reconsideration on identical grounds would be tantamount to a successive petition for reconsideration, would allow the Western Pacific an undue procedural advantage and would run counter to orderly administrative process.

Wherefore, the Union Pacific Railroad Company, defendant herein, urges that the petition of the Department of Justice for intervention be denied in the absence of good cause shown for failure to comply with the requirements of Rule 1.72(b) or, in the alternative, that the petition for intervention be rejected since this proceeding was terminated by the Commission's order of July 12, 1963.

Respectfully submitted,

H. E. Roos, John J. Burchell, William P. Higgins, Attorneys for Union Pacific Railroad Company, Defendant.

Due Date: August 15, 1963.

1416 Dodge Street, Omaha, Nebraska.

[fol. 799] Certificate of Service (omitted in printing).

[fol. 802]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I.C.C. Docket No. 33679

[Title omitted]

REPLY OF DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO PETITION OF THE UNITED STATES TO REOPEN PROCEEDINGS—Served August 12, 1963

Come now the defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company and reply to the petition of the United States to reopen this proceeding for the purpose of

considering the recent petitions of the United States for leave to intervene and for reconsideration by the full Commission and state as follows.

[fol. 803] Preliminary Statement

This proceeding which began on February 10, 1961, involves an attempt by The Western Pacific Railroad Company and its short-line subsidiaries,[1] hereinafter called "complainant," to compel the establishment of additional through routes between points in California served by the complainant or The Atchison, Topeka and Santa Fe Railway Company and points in Oregon, Washington and Idaho served by the defendants Northern Pacific Railway Company and the Union Pacific Railroad Company and their short-line connections via Bieber, California, and Portland, Oregon. The complainant alleged that the defendants had violated both Sections 1(4) and 3(4) of the Act and sought an affirmative order of the Commission requiring the establishment of through routes and joint rates between the points involved.

Following a full hearing, briefs, exceptions and replies thereto, Division 2, in a well considered and carefully reasoned report and order, served August 2, 1962, found that the public interest did not require the establishment of the through routes and joint rates sought under Sections 1(4) and 15(3) of the Act and that, further, such routes would shorthaul the defendants without their consent in violation of Section 15(4) of the Act. The Division further found [fol. 804] that the complainant was not a "connecting line" of the defendants within the meaning of Section 3(4) of the Act and that, moreover, even if complainant were a connecting line of the defendants, the evidence of record did not establish the necessary similarity of circumstances and conditions which would justify equality of treatment at the Portland gateway.

Complainant apparently agreed with Division 2 that the establishment of additional through routes and joint rates

[1] The Sacramento Northern Railway and the Tidewater Southern Railway Company.

were not required or desirable in the public interest because in its first petition for reconsideration filed August 29, 1962, it abandoned its Section 1(4) allegation and raised essentially only two points, both relating to Section 3(4) of the Act; namely, (1) that it was a connecting carrier of the defendants at the Portland gateway despite the fact that its line does not come within less than 490 miles thereof and that, admittedly, through routes do not presently exist, and (2) that the evidence of record required the Commission to find a similarity of circumstances and conditions as between the routes sought and the existing routes, thus requiring equality of treatment. Replies were filed thereto, and Division 2, acting as an appellate division, denied the petition on January 18, 1963.

Three days later complainant filed a petition for waiver of the Commission's rules to permit the filing of a petition submitted therewith for a further hearing. Replies were filed thereto. On January 30, 1963, complainant filed a peti- [fol. 805] tion seeking a finding that an issue of general transportation importance was involved, and on February 14, 1963, the Commission issued its order finding that an issue of general transportation importance was involved. Complainant then filed a second petition for reconsideration on March 21, 1963, which again raised the same two points as its earlier petition for reconsideration. Replies thereto were filed by the parties on April 29 and May 13, 1963. By order dated July 12 and served July 30, 1963, the Commission denied complainant's petition of January 21, 1963, for a further hearing, petition of March 21, 1963, for reconsideration, and request for oral argument. In the absence of further action by the Commission, this order is administratively final and terminates the proceeding.

Petitioner now seeks to vacate the Commission's final order for the purpose of having the Commission reconsider the same two points that had been previously raised and twice considered by Division 2 and unanimously rejected and further considered by the full Commission and rejected; namely, (1) that complainant is a "connecting line" of the defendants at the Portland gateway within the meaning of

Section 3(4) of the Act despite the fact that its line does not come within 490 miles thereof and that, admittedly, through routes do not presently exist, and (2) that the evidence of record requires the Commission to find a similarity of circumstances and conditions as between the routes which complainant seeks to open and the existing [fol. 806] routes, thus requiring equality of treatment at the Portland gateway. Petitioner has not sought reconsideration of the Commission's action under Sections 1(4) and 15(3) of the Act, and we can therefore assume that it agrees with the complainant that the establishment of such rates and routes are not necessary or desirable in the public interest and, moreover, the opening of such routes would shorthaul the defendants in violation of Section 15(4) of the Act.

Admittedly, the Commission has, even at this late date, the power to vacate its final order and to once again reconsider the two points raised. However, petitioner has presented no additional evidence or authorities other than those already presented by the complainant and carefully considered on two occasions by Division 2 and then by the entire Commission. We, therefore, submit that this petition is completely without merit and should be denied.

Argument

I.

Petitioner's Status Not Unique

Petitioner asserts that its interest is independent of that of the parties and that its views "could assist the Commission in reaching a decision more informed" than is otherwise possible. (Pet. Par. 2). Implicit in this statement is the assertion that petitioner either enjoys a unique status not enjoyed by other litigants or that it enjoys greater [fol. 807] wisdom than other litigants because its insight is not clouded by self-interest.

If the petition in intervention is granted, the United States would, to all intents and purposes, become a com-

plainant in this proceeding and, as such, entitled to the same relief as granted the complainant in the case in which the intervention is filed. *Raymond Bag Co.* v. *Atchison, T. & S. F. Ry. Co.*, 196 I.C.C. 487, 488; *General Motors Corp.* v. *Pennsylvania R. Co.*, 200 I.C.C. 679. The Department of Justice enjoys no greater standing before the bar of this Commission than that of any other litigant. The statement of the Supreme Court in *Vinson* v. *Washington Gas Co.*, 321 U.S. 489, 498 (1944), with respect to the Administrator of the Office of Price Administration of the United States seems particularly apropos:

> "It would seem then that, in the absence of clear legislative mandate to the contrary, the petitioners should not possess greater rights than other intervenors."

With respect to the same agency, the court stated in *I. C. C.* v. *Jersey City*, 322 U.S. 503, 523 (1944):

> "The scope of proper judicial review does not expand or contract, depending on what party invokes it. It is as narrow now as it was when appealed to by the Company. * * * If Congress desires to grant its own agencies greater privileges of judicial review than have been allowed to private parties it is at liberty to do so, but it is not for the Court to set aside, without legislative command, its slow-wrought general principles which protect the finality and integrity of decisions by administrative tribunals."

The points raised and authorities cited by the petitioner have already been fully presented by the complainant. The [fol. 808] fact that no additional evidence or authorities are presented by the petitioner, other than those already fully considered by the Commission, would appear to indicate that such assistance as petitioner is able to offer has already been afforded the Commission in the disposition of this proceeding.

II.

The Commission Properly Construed Section 3(4) of the Act

Petitioner asserts that intervention was sought because of the "unique importance" of the case and also because it believes that the Commission in its construction of Section 3(4) of the Act had "accomplished its substantial repeal." (Pet. Par. 5).

The Commission fully recognized the importance of this proceeding in its order of February 14, 1963, finding that an issue of general transportation importance was involved. So far as the second point raised, the term "connecting lines" and "connecting therewith" have been contained in the Interstate Commerce Act since its inception. (24 Stat. L. 380). The duty imposed under Section 3(4) of the Act with respect to connecting lines is two-fold; namely, to provide proper facilities for the interchange of traffic, and to avoid discrimination in rates and charges. The critical language, namely, "connecting lines" as it pertains to rates and charges has not changed during this entire period.

The Commission has properly held that connecting lines [fol. 809] are those which either have a direct physical connection or which make up a through route in accordance with the holding of the Supreme Court in *Atlantic Coast Line R. R.* v. *United States,* 284 U.S. 288, 293. The Commission has also adopted the same definition of the term "connecting line." Complainant has never contended that through routes presently exist. It has, however, insisted that it had either (1) a direct physical connection with the defendants through other lines despite the fact that it did not come within 490 miles of Portland or (2) that a direct physical connection was not required to come within the purview of Section 3(4) of the Act. At no point has either complainant or petitioner defined the term "connecting line." Petitioner would have the Commission ignore the adjective "connecting," thus permitting Section 3(4) to be invoked by any line in the United States against any other line regardless of their proximity or location and regard-

less of whether they actually participated in providing through transportation service. Such a construction would bring Subparagraph (4) of Section 3 in direct conflict with Subparagraph (1) of the same section because Subparagraph (1) cannot be invoked by any other carrier. However, this limitation which was added by the Transportation Act of 1940 would be meaningless if the adjective "connecting" were eliminated from Subparagraph (4) of Section 3 of the Act by the administrative construction petitioner advocates. (54 Stat. L. 902).

[fol. 810] The construction of Section 3(4) of the Act, adopted by the Commission in the instant proceeding, is supported both by reason and authority. The term "connecting line" has had an established meaning since the creation of this Commission. The ill-conceived construction urged by petitioner would literally open a Pandora's box and ultimately lead to the most wasteful transportation imaginable. It is difficult, indeed, to understand how the petitioner can advocate such a patently unsound construction of this most basic provision of the Act.

The petitioner further asserts that the Commission applied an improper standard to measure the similarity of circumstances and conditions between the existing and the sought routes. However, even petitioner recognizes that as to points east of the Cascade Mountains the existing routes are faster and more direct than those sought by complainant. (Pet. Recon. 2). Petitioner further concedes that substantially similar circumstances and conditions must be found before equality of treatment is required under Section 3(4) of the Act. (Pet. Recon. 22). Petitioner apparently recognizes that when the sought routes are compared in their entirety with the existing routes, there is substantial dissimilarity because it seeks, as did the complainant in its two petitions for reconsideration, to compare the routes north of Portland, Oregon, only and to ignore the routes south thereof. This is certainly a tacit recognition of the dissimilarity of the sought routes when compared in their entirety, as they must be, with the [fol. 811] existing routes.

The allegedly prejudiced routes which complainant sought extended between points in California on the Santa Fe or Western Pacific through Bieber via the Portland gateway to points in Oregon, Washington and Idaho on the Northern Pacific and Union Pacific and their short-line connections. The allegedly preferred routes extended between stations on the Southern Pacific in California and stations on the Northern Pacific and Union Pacific and their short-line connections in Oregon, Washington and Idaho. Such routes must be considered as a whole and cannot be divided north and south of the Portland gateway. This obvious attempt on the part of petitioner to subvert the fundamental requirements of Section 3(4) of the Act is contrary to all reason and authority. It is well established that both the preferred and the prejudiced routes must be considered as a whole. See *Denver & R. G. W. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611, 657, 658.

The Commission, the shipper and the defendants are obviously just as interested in the service to be provided north of Portland, Oregon, as they are the service south of Portland, Oregon. It is the entire route that is sought and not just a portion thereof, and, therefore, the routes cannot be atomized, as petitioner here seeks, for the purpose of establishing the necessary similarity of circumstances and conditions to comply with Section 3(4) of the Act. This same argument has been twice considered by Division 2 and rejected and then considered by the full Commission and rejected.

[fol. 812]

III.

The Commission Has Fully Complied with the Administrative Procedure Act

Petitioner further asserts that the Commission's order of July 12, served July 30, 1963, fails to comply with Section 17 of the Act as well as its own regulations and the Administrative Procedure Act. (5 U.S.C.A. §1001 et seq.). Petitioner apparently contends that because the Commission found that an issue of general transportation impor-

tance was involved, the Commission was therefore obligated to grant the complainant's petition for reconsideration. Nothing could be further from the fact.

Petitions for rehearing before administrative bodies are addressed *to their own discretion. I. C. C.* v. *Jersey City, supra,* 517; *Baltimore & O. R. Co.* v. *United States,* 100 F. Supp. 1002, 1012. The order of Division 2 dated January 18, 1963, denying the complainant's first petition for reconsideration was administratively final. (49 U.S.C.A. Sections 17(6) and (9); Rule 1.101(a)(2)). However, once the Commission entered its order of February 14, 1963, finding that an issue of general transportation importance was involved, the administrative finality of the Division's order was suspended pending the further ruling of the Commission on the subsequent petition for reconsideration. (Rule 1.101(a)(2)). Complainant's petition for reconsideration by the full Commission was addressed to the discretion of the Commission and the Commission, in the sound exer- [fol 813] cise of its discretion, declined to reconsider the matter in accordance with Section 17(6) and (9) of the Act and its own General Rules of Practice. (Rule 1.101 (a)). This order is now administratively final under Section 17(9) of the Act.

Petitioner apparently labors under the misapprehension that the Commission has no discretion in this matter and once an issue of general transportation importance is announced, the Commission is *ipso facto* compelled to reconsider the prior action of the division. The finding of an issue of general transportation importance pursuant to Rule 1.101(a) simply authorizes the filing of a further petition for reconsideration. In the absence of such a finding, the second petition would have been a successive petition within the purview of Rule 1.101(f) and, therefore, would not have been entertained. However, because an issue of general transportation importance was found, the petition was entertained and declined.

The matter of the Commission's disposition of a request for reconsideration and for additional hearings is peculiarly within its province and will not be disturbed by the courts

on appeal in the absence of "fundamental unfairness or plain abuse of discretion." *I. C. C.* v. *Jersey City, supra,* 517; *Village of Candor* v. *United States,* 151 F. Supp. 889, 894. It is therefore abundantly clear that the Commission can, in the exercise of its discretion, decline to reconsider a decision of a division.

[fol. 814] Petitioner further labors under the misapprehension that the Commission is required to state the grounds for its denial of a petition for reconsideration. Again, this is simply not the law. The Commission is not required to state the grounds for a denial of a petition for rehearing and reargument because the matter rests entirely within the discretion of the Commission. *Southern Bakers Association* v. *United States,* 124 F. Supp. 600, 604; *Carolina Scenic Coach Lines* v. *United States,* 59 F. Supp. 336. The Commission's usual practice is not to explain why rehearing or reargument has been denied. Only in the rarest cases has it departed from its customary practice and explained the reasons why rehearing and reargument have been denied. For the exception to the general rules, see *Divisions of Freight Rates,* 156 I.C.C. 94.

We therefore submit that the report and order of Division 2 and the Commission's order of July 12, served July 30, comply in all respects with Section 17 of the Act, the applicable provisions of the Administrative Procedure Act (5 U.S.C.A. 1001 et seq.), and the provisions of its own General Rules of Practice, 1.101, and that the latter order is administratively final.

IV.

Final Order of the Commission Should Not Be Set Aside in the Absence of a Manifest Injustice

Petitioner here seeks to intervene two and one-half years [fol. 815] after the action was commenced, more than two years after the hearing was held, and two weeks after the Commission has acted upon its final order in this proceeding. Petitioner requests that the proceeding be reopened solely for the purpose of having the Commission reconsider

two legal points, both of which have been fully presented and adequately briefed by the complainant, twice considered by the Division and once by the full Commission because this petitioner believes that the Commission has erroneously construed Section 3(4) of the Act. The petitioner tacitly recognizes that the sought routes are not required in the public interest by failing to seek reconsideration of the Commission's action under Section 1(4) of the Act.

Petitioner, of course, is not a party of record and, therefore, lacks standing to file this petition. Moreover, complainant could not file such a petition for reconsideration because it would constitute a successive petition submitted upon substantially the same grounds as the former petition which has been considered and denied by the full Commission. (Rule 1.101(f)). Therefore, this petitioner who is not a party to the proceeding here seeks to file a petition which complainant itself could not file and which the Commission would not entertain.

While, admittedly, the Commission has jurisdiction to reopen this proceeding, such jurisdiction should be "sparingly exercised." *Sprague* v. *Woll,* 122 F. 2d 128, 130. [fol. 816] Petitioner is in the position of an intervenor before a court who seeks leave to intervene after the entry of final judgment. The courts of equity have been extremely liberal in allowing intervention. However, it is clear that at this point intervention would not be granted by a court, even in an equity proceeding. In *United States* v. *Northern Securities Co.,* 128 F. 808, the court states as follows at page 810:

> "Applications for leave to intervene in a case after the entry of a final decree are very unusual. They are never granted as a matter of course, and, owing to the tendency of such applications to occasion delay and prolong the existing litigation, they ought not to be granted unless it is necessary to do so to preserve some right which cannot otherwise be protected, or to avoid some complication that is liable to arise."

See also *Baltimore Trust Co.* v. *Interocean Oil Co.*, 30 F. Supp. 484, and *Caldwell* v. *Guardian Trust Co.*, 26 F. (2d) 218, 222.

If parties are permitted to intervene and to file petitions for reconsideration which even parties of record are, under the rules of procedure, barred from filing, an administrative proceeding would never be concluded. Confronted with similar situations, the courts have said: "Under such procedure, litigation would be without end." *Roberts* v. *Metropolitan Life Ins. Co.*, 94 F. 2d 277, 281.

Conclusion

Petitioner apparently concedes that the Commission properly refused to order the establishment of additional [fol. 817] through routes pursuant to Sections 1(4) and 15(3) of the Act. The sole basis for its petition in intervention and for reconsideration and, now, to set aside the order of the Commission dated July 12 and released July 30, 1963, is that the Commission refused to do indirectly under Section 3(4) of the Act that which petitioner apparently concedes it could not do directly under Section 1(4) and 15(3) of the Act. Petitioner has presented no new evidence or authorities but has simply reiterated two points which have been twice considered by Division 2 and then by the full Commission.

If petitioner has a right to intervene at this point to require the Commission to reconsider these same two points, "there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening." *I. C. C.* v. *Jersey City, supra*, 514. These petitions for intervention, for reconsideration and to set aside the Commission's final order are filed not as a matter of right but are simply pleas addressed to the Commission's discretion and as such, should, in the exercise of the Commission's sound discretion, be summarily denied.

The petition of the United States to set aside the Commission's order which is now administratively final has

[fol. 818] wholly failed to demonstrate any error of fact or law and should therefore be denied.

Respectfully submitted,

Earl F. Requa, Frank S. Farrell.

Due Date: August 28, 1963.

[fol. 819] Certificate of Service (omitted in printing).

[fol. 821]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF UNION PACIFIC RAILROAD COMPANY, DEFENDANT, TO PETITION OF THE UNITED STATES TO REOPEN PROCEEDING—Served August 16, 1963

Comes now Union Pacific Railroad Company, defendant, and replies to the petition of the United States, by the Department of Justice, requesting the Commission to vacate its final order of July 12, 1963, to reopen this proceeding for the purpose of accepting the petition of the Department of Justice for reconsideration and for other relief.

I.

This proceeding was terminated administratively by Commission order of July 12, 1963, served July 30. On August 7, 1963, the United States, by the Department of Justice, filed a petition requesting the Commission to vacate its order of July 12 and to reopen the proceeding for the purpose of reconsideration.

The Department of Justice is not a party to this proceed-[fol. 822] ing—which it has characterized as a private proceeding between private persons—and did not indicate any interest therein until after entry of the Commission's final order. The Department has no real interest in this

matter. While purporting to speak on behalf of the United States, it does not allege actual injury to governmental shippers such as the General Services Administration or the Department of Defense.

As the sole basis for its request that the Commission vacate its final order and reopen the proceeding the Department of Justice asserts that its participation will allow the Commission to reach a more informed decision. There is nothing in the pleadings filed by the Government to support this contention. No new evidence is offered and no new issues are presented by the Department. The position of the Department is in support of The Western Pacific Railroad Company, principal complainant, and the petition for reconsideration offered by the Government is no more than a re-presentation of the same issues and the same authorities presented repeatedly and thoroughly by the Western Pacific at each stage of this prolonged proceeding.

The Western Pacific will not be prejudiced by the refusal of the Commission to reopen this proceeding and reconsider matters reviewed twice by Division 2 and reargued to the entire Commission in the complainants' petition for reconsideration. No governmental agency actually shipping freight traffic will be injured by the refusal of the Commission to reopen the proceeding. This complaint has run the full scale of Commission consideration and all facts, [fol. 823] issues and authorities that the petitioning Department of Justice would assert have been presented by the complainants. Simply put, there is no sound reason why the Commission should take the drastic step of setting aside its final order at the request of the Department of Justice.

In one of its earliest reported decisions, *In Re The Petition of Produce Exch. of Toledo,* 2 I.C.C. 588, 592, the Commission expressed the following policy in denying the petition for reopening by a nonparty:

> "After such a case so presented has been decided by the Commission, it would be an anomaly in proceedings of this character, which are judicial in their nature, for

> a re-hearing to be granted and the case subsequently opened by the Commission at the instance of one who was not a party to the original proceeding. * * * We are now asked on the application of The Produce Exchange of the city of Toledo, which was not a party to that proceeding, but which had the opportunity to have been, if it had so desired, to set aside all that we did in that case in order that the questions involved in it may be again presented and heard and reconsidered by us. We know of no authority conferred upon us to grant a re-hearing upon such an application. * * *"

Again in *Traffic Bureau, Merchants' Exchange* v. *C., B. & Q. R.R. Co.*, 14 I.C.C. 510, the Commission declined to reopen a closed case at the request of parties not of record, advancing reasons equally applicable to the instant case:

> "The question involved has been before the Commission since 1903 and has been considered in every phase. No fact is stated in the extensive and able briefs presented in support of these petitions which was not already familiar to the Commission. No argument is advanced which has not been previously presented. While these parties have not at former stages of this discussion appeared upon the record, the interests which they represent have been fully appreciated and considered. * * *"

[fol. 824]

II.

The attempt of the Department of Justice to intervene and secure reopening of this proceeding can perhaps be explained by its apparent misunderstanding of the evidence and the findings of Division 2. Certainly, in its petition for reopening, the Department has repeatedly erred in paraphrasing the findings of Division 2.

The statements on pages 4 and 5 of the petition for reopening, while not particularly relevant to the Section 3(4) issue, attempt to cast the Division's findings in a far stronger light than the language of the report itself. Divi-

sion 2 did not acknowledge that in most cases the Western Pacific was unable to locate new industries along its line, nor did the report acknowledge an annual loss of 25,000 carloads by Western Pacific. According to the Department, the report of Division 2 did not "dispute" testimony regarding industrial and economic development in the Pacific northwest; it is not the function of the Commission to "dispute" evidence but to evaluate evidence and weigh its effect. The most glaring error by the Department, however, is its attempt to relate shipper testimony to the Section 3(4) discrimination issue rather than the Section 1(4) plea for routes and rates to which the testimony was directed.

The Department also reveals a misunderstanding of Division 2's conclusions of law. The Division did not rely on the short-haul restriction contained in Section 15(4) of the Act to dispose of the Section 3(4) issue but stated in con- [fol. 825] cise terms that Section 3(4) can be invoked only if there is rate discrimination between connecting lines that are similarly situated. Section 3(4) does not prohibit differing rate treatment between all rail carriers no matter how or where situated. Instead, it insures that carriers physically connecting or those participating in through routes, under similar circumstances, will treat each other equally insofar as rate concurrences are concerned. This not a revolutionary holding, but one amply supported by Commission and court precedent. Section 3(4) is not a back door for the establishment of new routes and joint rates; that is the purpose of Section 15(3) of the Act. The interpretation of Section 3(4) urged by the Department of Justice would accomplish the substantial repeal of Section 15(3) by rendering it surplus.

Nothing the Department has said persuades that Division 2 erred in finding that there was no violation of Section 3(4) and also that there was no showing that establishment of the routes and joint rates requested by the Western Pacific is necessary or desirable in the public interest.

III.

The Department of Justice asserts that there appears to be no identifiable decision in this proceeding. It professes to be unable to determine whether the Commission has denied the relief sought by the Western Pacific under Sections 1(4) and 15(3) of the Act or only the relief sought under Section 3(4).

[fol. 826] Completely inconsistent with this position, however, is the fact that the Department has had no difficulty in recognizing that the report and order of Division 2 constitute the decision of the Commission in this proceeding, as is evident from the pages of criticism of the Division 2 report in the petition for reopening.

Apparently the Department feels that the Commission should have specifically adopted the report and order of Division 2. Express adoptive language is not necessary under Section 17 of the Interstate Commerce Act and the Commission's general rules of practice, however, and it is self-evident that the Commission's order of July 12, 1963, denying complainants' petition for reconsideration, leaves the report and order of Division 2 as the final, effective Commission decision.

Section 17(6) of the Interstate Commerce Act provides that the Commission may, by its general rules, establish limitations upon *the right to apply* for rehearing, reargument or reconsideration of a decision, order or requirement of the Commission, or of a Division, so as to confine such right to proceedings involving issues of general transportation importance. In this instance the Commission, by its order of February 14, 1963, designated the proceeding as one involving an issue of general transportation importance and granted complainants *the right to apply* for reconsideration.

Under Section 17(6) rehearing, reargument or reconsideration *may be granted if sufficient reason thereof be* [fol. 827] *made to appear.* In its order of July 12, 1963,

the entire Commission, after receipt of complainants' petition for reconsideration, denied the petition for the reason that sufficient ground had not been presented to warrant granting the action sought. There need be no detailed explanation of such a negative order. In simple terms, complainants were granted the right to apply for reconsideration, but failed to advance sufficient reasons why reconsideration should be allowed. The Commission denial of the petition leaves the proceeding in the exact status it occupied upon the denial on January 18, 1963, by Division 2 acting as an appellate division, of the complainants' previous petition for reconsideration.

The effect of both orders of denial, that of Division 2 on January 18, 1963, and that of the entire Commission on July 12, 1963, is to leave the report and order of Division 2, decided July 26, 1962, as the definitive decision of the Commission. The decision of Division 2 contains preliminary findings of fact and ultimate conclusions of fact and law sufficiently articulated to acquaint all parties with the grounds upon which the final decision is laid. Upon resort to this decision the Department of Justice will have no difficulty in ascertaining that the Commission has found that complainants have not established discriminatory practices in violation of Section 3(4) of Act, and that the complainants did not prove that the establishment of through routes and joint rates is necessary or desirable in the public interest under Sections 1(4) and 15(3) of the Act.

[fol. 828] Conclusion

WHEREFORE, Union Pacific Railroad Company, defendant herein, urges that the Commission deny the petition of the Department of Justice requesting that the order of July 12, 1963, be vacated and this proceeding reopened for the purpose of considering a petition of the Department for reconsideration, and that the Commission likewise deny the Department of Justice's petition for leave to intervene

and all other relief sought in the petitions of July 26 and August 7, 1963.

Respectfully submitted,

H. E. Roos, John J. Burchell, William P. Higgins, Attorneys for Union Pacific Railroad Company, Defendant.

Due date: August 28, 1963.

1416 Dodge Street, Omaha, Nebraska.

Certificate of Service (omitted in printing).

[fol. 830]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 33679

[Title omitted]

REPLY OF INTERVENER SOUTHERN PACIFIC COMPANY TO PETITION OF UNITED STATES TO REOPEN PROCEEDING—Served August 21, 1963

Comes now intervener Southern Pacific Company and replies to the petition of the United States Department of Justice to the full Interstate Commerce Commission to vacate its order served July 30, 1963, to reopen the proceeding for the purpose of considering petitions of the United States filed July 26, 1963, to hear oral argument if warranted, and to issue a decision stating findings and conclusions and the reason or basis therefor upon all material issues, as well as an order granting or denying the relief sought.

Preliminary Statement

On July 26, 1963, petitioner filed a petition for leave to intervene, and a further petition for reconsideration, in this proceeding. Appropriate replies were subsequently filed by defendants herein and by intervener Southern [fol. 831] Pacific Company. To the knowledge of intervener

Southern Pacific Company, intervention has not to date been granted. Nevertheless, on August 7, 1963, the Department of Justice filed still another petition, which is the subject of this reply. There have been numerous pleadings heretofore filed in this proceeding, all as shown in intervener Southern Pacific Company's reply to the two previous petitions of the Department of Justice, dated August 1, 1963.

Intervener Southern Pacific Company here repeats all of the matters set forth in said reply and incorporates them herein by reference the same as though fully set forth at length.

1. Petitioner has no standing to file this petition

Petitioner is not a party of record, and lacks standing to file this petition. It is obvious that complainants themselves could not file a petition seeking reconsideration, because it would constitute a successive petition that has already been considered and denied by the full Commission (Rule 1.101(f)). As pointed out by intervener Southern Pacific Company in its reply to petitioner's petition for leave to intervene and for reconsideration, if such a course of action were allowed it would mean that in any Commission proceeding where a complainant had exhausted its remedies before the Commission it could then persuade other persons to file petitions based upon the very grounds that complainant had already set forth, argued and lost. Such a procedure could continue ad infinitum. There must be an end to litigation at some time. As the Commission said in *Cattle Raisers' Ass'n* v. *Chicago, B. & Q. R.R.*, 12 I.C.C. 6:

> [fol. 832] " . . . We feel that when an order has been made the case before this Commission should be treated as closed, and that it ought not to be opened except upon a showing that some wrong or injustice has been or will be effected."

Petitioner sets forth no reason why it should be entitled to relief that is now barred to complainants, and the fact that

petitioner is a branch of the Government gives it no special or unique status as a litigant. *Vinson* v. *Washington Gas Co.*, 321 U.S. 489, 498.

Petitioner raises no issue which has not already been urged by complainants, considered by the Commission, and denied. In view of the facts, it is unusual, to say the least, that it now seeks relief under a petition which has in effect already been considered and denied by the Commission.

2. There is an identifiable decision in this proceeding

Petitioner is of the opinion that there is no identifiable decision in this proceeding—evidently believing that since the proceeding has been designated as one involving an issue of general transportation importance the report and order of Division 2 has no administrative finality. Petitioner is wrong. Rule 1.101(a)(3) of the General Rules of Practice of the Interstate Commerce Commission gives the right to apply to the entire Commission for rehearing, reargument or reconsideration of a decision of a division when the Commission has announced or ordered that there is an issue of general transportation importance involved. Complainants in this proceeding were given that right to apply, and the Commission, after considering the petition filed by complainants, ordered that the petition for recon- [fol. 833] sideration and request for oral argument be denied for the reason that sufficient grounds had not been presented to warrant granting the action sought. Upon this action the report and order of Division 2 became administratively final. That decision of Division 2 is full and complete and has findings of fact and ultimate conclusions of fact and law sufficient to satisfy the Administrative Procedure Act. As a matter of fact, a reading of the petition filed herein makes it quite obvious that the Department of Justice knows *precisely* what the Interstate Commerce Commission has decided and the only read objection that the Department of Justice has is that it does not agree with the Commission's decision.

Wherefore intervener Southern Pacific Company requests that this Commission summarily deny the petition of the Department of Justice seeking vacation of the order of July 12, 1963.

Respectfully submitted,

Thormund A. Miller, Charles W. Burkett, W. Harney Wilson, Attorneys for Intervener Southern Pacific Company.

San Francisco, Calif., August 21, 1963.

[fol. 834] Certificate of Service (omitted in printing).

[fol. 835]

BEFORE THE INTERSTATE COMMERCE COMMISSION

958731 GHD

September 10, 1963

Mr. John N. Dougherty, Attorney
Department of Justice
Washington 25, D. C.

RE: No. 33679—The Western Pacific Railroad Company, et al. v. Camas Prairie Railroad Company, et al.

Dear Sir:

This has reference to your petition dated August 7, filed on behalf of the United States of America to reopen for reconsideration by the entire Commission the Report and Order of Division 2 in the above proceeding.

By the order dated August 9 and served on September 9, 1963, the petition for leave to intervene was denied, therefore no action will be taken on the petition to reopen for reconsideration.

The original has been placed in the correspondence section of the docket and the balance of the copies are returned.

Respectfully,

Secretary

Enclosures.

[fol. 836] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant.

COMPLAINT—Filed September 20, 1963

Come now plaintiffs, The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, by their attorneys, and for cause of action state:

I.

This is an action brought to enjoin, set aside, suspend and annul a Report and Order of the Interstate Commerce Commission (hereinafter referred to as "Commission") which Report and Order, bearing service date of August 2, 1962 was entered in a proceeding designated as No. 33679, The Western Pacific Railroad Company, et al. v. Camas Prairie Railroad Company, et al., and to enjoin, set aside, suspend and annul a subsequent Order of Commission bearing service date of July 30, 1963 in the identical proceeding. Copies of said Report and Order and Order, which are administratively final, are made a part hereof and in-
[fol. 837] corporated herein by reference and are attached as Exhibits "A" and "B", respectively.

II.

Jurisdiction of this court is invoked under Title 28, United States Code, Sections 1336, 2284 and 2321 through 2325 inclusive.

III.

A. Each of the plaintiffs is a corporation organized and existing under and by virtue of the laws of the State of California, and a part of the same system of railroad corporations, and each such plaintiff has its principal office and place of business at 526 Mission Street, San Francisco 5, California, a location within the Southern Division of the Northern Judicial District of California. Each of the plaintiffs is engaged in business as a common carrier by railroad subject to the provisions of the Interstate Commerce Act, as amended (49 U.S.C. §1, et seq.).

B. Each of the plaintiffs was a party to the Commission proceedings which culminated in the aforementioned Reports and Orders bearing service dates of August 2, 1962 and July 30, 1963, Exhibits "A" and "B", respectively.

IV.

The venue of this proceeding is in this court pursuant to Title 28, United States Code, Section 1398.

V.

United States of America is named as defendant pursuant to Section 2322 of Title 28, United States Code.

VI.

Plaintiffs, and each of them, are in direct competition with Southern Pacific Company, a common carrier by railroad also subject to the Interstate Commerce Act, for traffic moving between points in California and points in the Pacific Northwest states of Oregon, Washington and Western Idaho. Plaintiff, The Western Pacific Railroad [fol. 838] Company has served that area since 1931 as the middle link of a physical railroad route made up by end

to end connections of The Atchison, Topeka and Santa Fe Railway Company, The Western Pacific Railroad Company (plaintiff) and Great Northern Railway. The connection between Santa Fe and plaintiff, The Western Pacific Railroad Company, is at Stockton, California and between such plaintiff and Great Northern at Bieber, California. The route, popularly referred to interchangeably as either the "'Bieber Route" or "Inside Gateway Route" roughly, and generally, parallels the single line route of Southern Pacific Company between Los Angeles, California and Portland, Oregon where both such routes physically connect with Northern Pacific Railway and Union Pacific Railroad Company, both common carriers by railroad subject to the provisions of the Interstate Commerce Act. Portland, Oregon is a principal railroad gateway for interchange of traffic moving between points on the lines of said Northern Pacific and Union Pacific and their short line railroad connections in the states of Oregon, Washington and Western Idaho on the one hand and points on the Southern Pacific, Great Northern, Plaintiffs, and Santa Fe on the other. The Bieber route was expressly authorized by the Commission to be constructed in Great Northern Railway Co. Extension 166 ICC 3 (1930) to provide railroad competition to Southern Pacific Company between California and the Pacific Northwest. Except for an extremely limited number of commodities, the Northern Pacific Railway and Union Pacific Railroad Company and their short line connections have failed and refused to join plaintiff in the establishment of joint through railroad rates through the Portland, Oregon gateway while at the same time they have entered into such arrangements with plaintiffs' competitor, Southern Pacific Company.

Accordingly, plaintiffs, by formal complaint filed with the Commission on February 10, 1961, alleged that the [fol. 839] condition thereby created and maintained was unjust, unreasonable, unjustly discriminatory and unlawful pursuant to the provisions of Sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C. §1(4), 3(4)) and the National Transportation Policy (49 U.S.C. preceding §1) and was depriving the public and the plaintiffs of the use of reasonable through routes at reasonable and non-discrimi-

natory through joint rates between California and points in the Pacific Northwest located on the lines of Northern Pacific Railway and Union Pacific Railroad Company and their short line connections. That complaint named, in alphabetical order, the lines allegedly violating the Act as well as those other lines making up the "Bieber or Inside Gateway" route. Great Northern Railway, the Atchison, Topeka and Santa Fe Railway and Washington, Idaho & Montana Railway Company all agreed to join in the non-discriminatory rates therein sought but Northern Pacific Railway, Union Pacific Railroad Company and their short line subsidiaries refused.

VII.

Hearing was held in San Francisco, California on May 8, 9 and 10, 1961, at which time Southern Pacific Company intervened in support of defendants, Northern Pacific and Union Pacific, therein. Briefs were filed; a Report and Order of the Hearing Examiner finding that defendants therein, Northern Pacific and Union Pacific, had unlawfully and unjustly discriminated against plaintiffs herein in violation of Section 3(4) of Interstate Commerce Act (49 U.S.C. §3(4)) was issued and is attached and incorporated herein by reference as Exhibit "C". Defendants therein, Northern Pacific and Union Pacific, and intervener in their behalf, Southern Pacific, filed exceptions thereto; plaintiffs herein replied; the parties were heard by Division 2 of the Commission in Oral Argument. Under service date of August 2, 1962 the Commission (Division 2) issued the Report and Order attached hereto as Exhibit "A". Plaintiffs timely filed Petition for Reconsideration by said [fol. 840] Division 2. Plaintiffs, subsequently, on the 21st day of January 1963, filed Petition for Further Hearing before Division 2 for the purpose of introducing newly developed evidence. Under date of January 24, 1963, Division 2 issued its order denying plaintiffs' Petition for Reconsideration. Plaintiffs timely filed a petition with the Full Commission seeking a declaration that this was a matter of General Transportation Importance, thereby allowing further petition to the Full Commission. Under date

of February 14, 1963, the Commission found this to be a matter of General Transportation Importance and plaintiffs thereupon timely filed Petition for Reconsideration by the Full Commission. The United States of America, through the Department of Justice, on the 26th day of July, 1963, filed with the Commission a Petition for Leave to Intervene in support of the relief sought by The Western Pacific Railroad Company under Section 3(4) of the Interstate Commerce Act, together with a petition for such reconsideration and sought Oral Argument.

On July 30, 1963, plaintiffs were served with the Order of the Commission, attached hereto as Exhibit "B". On August 7, 1963, the United States of America, through the Department of Justice, filed with the Commission a petition to vacate the Commission's Order served July 30, 1963; to reopen the proceeding; to hear oral argument; and to issue a decision stating findings and conclusions and the basis therefor upon all material issues. On September 9, 1963, the Commission issued its Order denying the petition filed by the United States of America on the 26th day of July 1963, holding that this matter is administratively final. On the 10th day of September, the Commission, through its Secretary, refused to accept for filing the August 7, 1963 petition of the United States of America.

[fol. 841] VIII.

In its Report and Order, attached hereto as Exhibit "A", the Commission found that the admittedly discriminatory practices of Northern Pacific Railway and Union Pacific Railroad Company were not in violation of the provisions of Section 3(4) (49 U.S.C. §3(4)) because The Western Pacific Railroad Company does not, itself, physically connect with said railroads at Portland, Oregon nor does it presently enjoy a full line of through rates with said railroads, and hence was not entitled to invoke the protective provisions of Section 3(4); and further that in any event the discrimination is not unlawful because operating conditions over the Bieber route south of Portland, Oregon are allegedly not as favorable as operating conditions over the route of Southern Pacific Company south of Portland,

Oregon; Commission further found that there was a lack of public interest in the matter since, in the past, the shippers had not instituted a "determined campaign" seeking voluntary publication of the non-discriminatory rates over the Bieber route of plaintiffs.

IX.

Plaintiffs complain that the Report and Order of the Commission (Division 2) bearing service date of August 2, 1962, attached as Exhibit "A", is unlawful for the following reasons:

(a) The Report and Order is directly contrary to and in violation of the express provisions of Section 3(4) of the Interstate Commerce Act (49 U.S.C. §3(4)) because it incorrectly holds, as a matter of law and fact, that The Western Pacific Railroad Company is not a "connecting line" as that term is used in said statute and therefore as a matter of law is not entitled to seek relief thereunder.

(b)

(1) The Report and Order is further in error and contrary to law, and in violation of the provisions of Section [fol. 842] 3(4) of the Interstate Commerce Act (49 U.S.C. §3(4)) in that it applies as the test of lawfulness of admittedly discriminatory practices the alleged lack of similarity of physical operating conditions over the preferred and prejudiced rail lines south of the point of common connection with the lines practicing the discrimination.

(2) The Report and Order is further in error in that it applies such test in an arbitrary and capricious manner and contrary to the evidence introduced at the hearing.

(c) The Report and Order is in error, both in fact and law, in finding that on traffic moving to and from Northern Pacific points located east of the Cascade Mountains plaintiffs herein seek a circuitous routing via Auburn, Washington rather than via the same direct routes used for handling traffic interchanged at Portland, Oregon with Southern Pacific Company.

(d) The Report and Order is in error in law and fact by erroneously, arbitrarily and capriciously failing to separate the evidence and issues as they apply to the various defendants and territories involved in the proceedings before the Commission with the result that ultimate conclusions are based upon completely unrelated, irrelevant and immaterial evidence.

(e) The Report and Order is in error in law and fact in arbitrarily and capriciously rejecting the evidence introduced by shippers of freight, and further in arbitrarily and capriciously finding any significance in the failure of those shippers, and others, to request or demand that Northern Pacific and Union Pacific Railroad voluntarily publish non-discriminatory rates and practices; and is further in error, if it deemed such failure to be of any legal significance in its ultimate conclusions to provide plaintiffs with the requested opportunity of further hearing to prove the fact that subsequent to the Order set forth in Exhibit "A" over one hundred (100) shippers had requested such [fol. 843] rates and that Northern Pacific and Union Pacific had failed to grant such shipper applications for voluntary publication of non-discriminatory rates and practices via the Bieber route.

(f) The Report and Order is in error in its arbitrary and capricious failure and refusal to find that the present discriminatory rate practices of Northern Pacific Railway and Union Pacific Railroad Company force wasteful transportation practices upon plaintiffs and those dependent upon their services as common carriers of freight.

(g) The Report and Order is in error in its arbitrary and capricious failure and refusal to find upon the evidence produced upon the record that the present discriminatory rate practices of Northern Pacific Railway and Union Pacific Railroad Company are directly responsible for a number of important and substantial freight producing industries declining to locate their facilities adjacent to The Western Pacific Railroad Company or its subsidiary rail lines, thereby causing irreparable injury to those lines.

(h) The Report and Order is in error in its arbitrary and capricious violation of the Congressional mandate re-

cited in the National Transportation Policy (49 U.S.C. preceding §1) in that it permits and encourages practices which fail to promote safe, adequate, economical and efficient service or to foster sound economic conditions in transportation and among the several carriers and which fail to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discrimination, undue preferences or advantage.

(i) The Report and Order is in error in its failure to set forth conclusions which are supported by substantial evidence; by adequate findings of fact; or by logical reasoning and does not therefore meet the standards required by law and is contrary to the provisions of Section 8(b) of the [fol. 844] Administrative Procedure Act (5 U.S.C. §1007 (b)) in that it does not contain the required statement of findings and conclusions, as well as the basis therefor, upon the material issues of fact, law or discretion presented upon the record.

X.

Plaintiffs further complain that the Order bearing service date of July 30, 1963, attached as Exhibit "B" is unlawful for the following reasons:

(a) The order erroneously, arbitrarily and capriciously fails and refuses, after the Commission had declared this to be a matter of General Transportation Importance, to reconsider the Report and Order bearing service date of August 2, 1962, attached as Exhibit "A", or to correct any of the alleged errors of law, fact and discretion contained therein.

(b) The Order is in further error in its failure and refusal to set forth conclusions which are supported by substantial evidence; by adequate findings of fact; or by logical reasoning and does not therefore meet the standards required by law and is contrary to the provisions of Section 8(b) of the Administrative Procedure Act (5 U.S.C. §1007(b)) in that it does not contain the required statement of findings and conclusions, as well as the basis

therefor, upon the material issues of fact, law or discretion presented upon the record.

Wherefore, plaintiffs pray:

1. That process may issue against defendant the United States of America.

2. That a court constituted as required by Title 28 of the United States Code, Sections 2284 and 2321-2325 consisting of three judges, be convened.

3. That upon final hearing a decree be entered permanently enjoining, setting aside, annulling and suspending the Report and Order of the Commission bearing ser-
[fol. 845] vice date of August 2, 1962 and the Order of the Commission bearing service date of July 30, 1963 both entered in the Commission's Docket 33679.

4. That upon final hearing and the entering of a decree permanently enjoining, setting aside, annulling and suspending said Report and Order and said Order of August 2, 1962 and July 30, 1963, this matter be remanded to the Commission for further proceedings and the issuance of a Report and Order of the Commission correcting the errors contained in the Commission's Report and Order bearing service date of August 2, 1962 and Order of the Commission bearing service date of July 30, 1963 both entered in Commission Docket 33679.

5. That plaintiffs have such other and further relief in the premises as may be deemed meet and just by this Honorable Court.

E. L. Van Dellen, R. W. Bridges, Leighton Hatch, Walter G. Treanor, By Walter G. Treanor, Attorneys for Plaintiffs.

[fol. 846]

EXHIBIT "A" TO COMPLAINT

[Stamp—Received Aug 3, 1962—Law Department]

INTERSTATE COMMERCE COMMISSION

Service Date
August 2, 1962

No. 33679

WESTERN PACIFIC RAILROAD COMPANY, et al.,

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

Decided July 26, 1962

Failure and refusal of defendants to join with complainants and their connecting lines in establishing through routes and joint rates applicable via Bieber, Calif., and Portland, Oreg., on the same basis as those maintained with the Southern Pacific Company via Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, found not shown to be unjust or unreasonable, nor to result in discrimination. The establishment of such rates and routes found not shown to be necessary or desirable in the public interest. Complaint dismissed.

Walter G. Treanor for complainants.

A. R. Allen and *Clifford Worth* for parties in support of complainants.

A. K. Hinckle for a defendant in support of complainants.

Frank S. Farrell, William P. Higgins, L. W. Hobbs, Frederick G. Pfrommer, Earl F. Requa, and *R. Paul Tjosseni* for defendants.

Charles W. Burkett, Jr., Eugene Garfinkle, and *Thormund A. Miller* for intervener in opposition to complainants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS FREAS, GOFF, AND HERRING

FREAS, *Commissioner*:

Exceptions to the report and order recommended by the examiner were filed by the defendants and the intervener, and the complainants replied. We have heard the parties in oral argument. Our conclusions differ from those recommended. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

By complaint filed on February 10, 1961, The Western Pacific Railroad Company, and its short-line subsidiaries,[1] [fol. 847] hereinafter sometimes collectively called the Western Pacific or complainants, allege that the failure and refusal of the defendants[2] to establish and maintain, between points in California, served by the complainants or in connection with the Santa Fe, and points in Oregon, Washington, and Idaho, served by the defendants, chiefly the Union Pacific and the Northern Pacific, joint through rates over routes through Bieber, Calif., and Portland, Oreg., on the

---

[1] The Sacramento Northern Railway (Sacramento Northern) and the Tidewater Southern Railway Company (Tidewater Southern).

[2] The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), Camas Prairie Railroad Company (Camas Prairie), Great Northern Railway Company (Great Northern), Northern Pacific Railway Company (Northern Pacific), Pacific Coast R. R. Co. (Pacific Coast) Spokane International Railroad Company (Spokane), Union Pacific Railroad Company (Union Pacific), Walla Walla Valley Railway Company (Walla Walla), and Washington, Idaho and Montana Railway Company (Washington, Idaho and Montana). The Camas Prairie is jointly owned by the Northern Pacific and Union Pacific. The Spokane is a subsidiary of the Union Pacific, and the Walla Walla is a subsidiary of the Northern Pacific.

same basis as those maintained by the defendants in connection with the Southern Pacific Company (Southern Pacific) through Portland, violates sections 1(4) and 3(4) of the Interstate Commerce Act, and is contrary to the provisions of the national transportation policy. We are asked to prescribe just, reasonable, and nondiscriminatory competitive joint through rates, charges, practices and through routes. We are also asked to hold open this proceeding in the event the parties are unable to agree on divisions, so that the Commission may prescribe divisions.

The Santa Fe, the Great Northern, Pacific Coast, and Washington, Idaho and Montana have indicated their willingness to establish and maintain the routes and rates sought. The Western Pacific, Washington, Idaho and Montana, and numerous shippers and shipper associations presented evidence in support of the complaint, whereas the Union Pacific, Northern Pacific, and Southern Pacific (intervener) presented evidence in opposition.

General location of the railroads concerned.—The complainants operate for nearly 1,000 miles in California and serve such cities as San Francisco, Oakland, San Jose, [fol. 848] Stockton, Sacramento, Modesto, Marysville, Keddie, Bieber, and Oroville. The east-west line of the Western Pacific extends from Salt Lake City, Utah, to the San Francisco-Oakland bay area, with a north-south line extending from Keddie to a connection with the Great Northern at Bieber, 490 miles south of Portland. The Western Pacific connects with the Santa Fe at Stockton, permitting service to and from points in southern California, and also with the Union Pacific at Wells, Nev., and Salt Lake City. So far as the territorial scope of this complaint is concerned, it does not physically connect with the lines of the principal defendants, the Northern Pacific and the Union Pacific, and does not reach the involved interchange point at Portland.

The Great Northern, Union Pacific, and Northern Pacific serve, among others, numerous points in Oregon, Washington, and Idaho. In addition to the connections previously noted, to the extent here important, the Great Northern,

Union Pacific, Northern Pacific, and Southern Pacific connect at Portland; and the Union Pacific and Southern Pacific connect at Ogden, Utah, and Wells. In the northwestern area, the Great Northern and its connections are competitive with the Northern Pacific. In California, the Southern Pacific is competitive with the Western Pacific and the Santa Fe, and the Union Pacific also serves portions of southern California.

Routes.—The two major routes considered herein are hereinafter called the Bieber route and the Southern Pacific route. The former, to Great Northern destinations, has been in existence since 1931. See *Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 170 I.C.C. 399. This route to such destinations consists of the Santa Fe to Stockton, thence the Western Pacific to Bieber, and the Great Northern beyond; or from origins on the Western Pacific, that carrier to Bieber, thence the Great Northern. The Southern Pacific route consists of the Southern Pacific to Portland, thence the Northern Pacific, Union Pacific, or the Great [fol. 849] Northern, depending upon the carrier serving the northwestern destination. The Santa Fe also participates in the Southern Pacific route on certain movements to or from California points.

The routes sought herein generally consist of the Bieber route as above defined over the Great Northern to Portland, thence the Northern Pacific or the Union Pacific depending upon the carrier serving the northwestern destination.

The Union Pacific, whose line reaches California in the Los Angeles area, participates in routes between points in California on the complainants' lines and northwestern points on its line east of Huntington, Oreg., with interchanges at Salt Lake City and Wells. It also has a route between southern California and certain points in the northwest via Salt Lake City and Pocatello, Idaho. The Union Pacific and the Southern Pacific also participate in routes via Wells or Ogden.

Present rate structure.—The Great Northern participates with the complainants[3] in joint through class and commodity rates for application over the Bieber route. These joint rates are generally the same as those maintained by the defendants in connection with the Southern Pacific through Portland. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company also maintains joint rates with the complainants over routes through Bieber. Also, the Union Pacific participates in joint rates with the complainants over routes through Salt Lake City or Wells, similar to those maintained by that defendant with the Southern Pacific over routes through Ogden or Wells.

The defendants have maintained the joint rates with the Southern Pacific through Portland for over 50 years. The Northern Pacific has refrained from establishing joint rates through Bieber with its strongest competitor, and it is fearful that the establishment of such rates would enable the Great Northern to solicit its traffic. The Union Pacific feels that the existing rates are sufficient to meet the needs of the shipping public. These defendants, however, favor addi- [fol. 850] tional rates through Bieber if and when a need therefor is demonstrated. Thus, there are, with some exceptions, no joint rates over the routes sought, and the shipments must move under combination rates, using the rates, local or joint, from and to Portland. These combination rates are generally higher than the joint rates maintained by the defendants with the Southern Pacific.

Traffic may now move over the Bieber route between points on the complainants' lines in California and points in the Northwest served by the Northern Pacific or the Union Pacific and the Great Northern, if interchange facilities with the latter[4] are available at the northwestern point of origin or destination. The charges on such traffic are based on the complainants' and the Great Northern's joint through rates, plus the switching charge for interchange

[3] Also the Santa Fe.

[4] Portland and Bend, Oreg., Vancouver, Chehalis, Seattle, Tacoma, Spokane, and Centralia, Wash., are representative examples of such points.

service, except that the switching charge is absorbed by the Great Northern if the point on the complainants' line has interchange facilities with the Southern Pacific.

Traffic may also move via Portland between points served by the complainants and the Southern Pacific, where interchange facilities exist, and points on the Northern Pacific or the Union Pacific which are not served by the Great Northern. A switching charge is made for the interchange in addition to the joint rate published by the Southern Pacific and the Northern Pacific or the Union Pacific.

The complainants point out that the present rate situation deprives them of an opportunity to participate in the line-haul service on traffic originating on their lines. For instance, the Campbell Soup Company, whose Sacramento plant is located on the Western Pacific, shipped over 150 carloads of traffic to points served exclusively by the Northern Pacific or the Union Pacific in 1959. This traffic moved [fol. 851] over the Southern Pacific route because the combination rates applicable over the route through Bieber exceeded the switching charge and the joint rates in connection with the Southern Pacific.

In 1960, the Campbell Soup Company sought through competitive rates from Sacramento via Bieber to destinations on the Northern Pacific and the Union Pacific or their short-line connections so that its charges might be reduced by avoiding the charge for switching by the Western Pacific. In 1961, the Southern Pacific authorized the absorption of this switching charge. This reduced the shipper's transportation costs, but the Western Pacific still was denied an opportunity to participate in the line-haul movement.

Between points on the Western Pacific and those on the Northern Pacific or the Union Pacific, a number of joint commodity rates are maintained over routes of the complainants' lines to or from a junction point in California with the Southern Pacific, thence that line through Portland and the defendants beyond. The complainants agreed to establish these rates in connection with the defendants over such routes because they are needed to allow shippers located on the complainants' lines to reach markets in com-

petition with other California producers. Otherwise, where switching service is not available at the origins or destinations, the lowest combination rates are charged over any route permitting interchange with the Southern Pacific in California, or the Great Northern and Northern Pacific or Union Pacific in Oregon, Washington, or Idaho.

On canned goods from McHenry, Calif., to Yakima, Wash., the lowest combination is based on Stockton, and applies only over the Tidewater Southern to Stockton, thence the Southern Pacific to Portland, and the Northern Pacific or the Union Pacific to destination. There are canners at Yuba City, Calif., on the Sacramento Northern, but that car-
[fol. 852] rier and the Southern Pacific do not interchange traffic thereat. The lowest rates from Yuba City to Walla Walla, Wash., for example, are combinations over Marysville, Calif., using the local rate of the Sacramento Northern to Marysville and the joint rate of the Southern Pacific and the Northern Pacific or the Union Pacific beyond. These rates deprive the complainants of a line-haul although they originate the traffic.

Between points on the Northern Pacific or the Union Pacific and those on the Santa Fe (except in the San Francisco Bay area), joint rates are maintained over routes including the Southern Pacific. Only higher combination rates are available between the same points over the routes sought herein through Bieber. The complainants argue that this denies to the public the advantages of alternate routes and deprives the Western Pacific of an opportunity to participate in the movement of the traffic.

The complainants now have lower combination rates on forest products from Olympia, Shelton, and other points in Washington on the Northern Pacific to San Francisco Bay points, than the joint rates maintained in connection with the Southern Pacific to the same points. However, the complainants fear that this adjustment is temporary, and that this traffic will again be confined to the Southern Pacific by a reduction of the joint rates.

There are joint commodity rates on cast iron pipe, automobiles, and livestock, in addition to joint class rates, from points on the complainants' lines to points on the lines

of the defendants over the routes sought. The joint rates on cast iron pipe, from Carpenter, Calif., on the Western Pacific to points in Oregon, Washington, and Idaho on the Northern Pacific or the Union Pacific, were established on June 21, 1952, as the result of a complaint[5] filed by the [fol. 853] United States Pipe & Foundry Company. These rates are the same as those in effect to the same points from Decoto, Calif., on the Southern Pacific, with interchange at Portland. The Northern Pacific and the Union Pacific receive the same divisions of these rates north of Portland on the traffic through Bieber as they receive from the joint rates maintained in connection with the Southern Pacific. In 1959 and 1960, respectively, 124 and 154 carloads of this pipe moved.

The joint rates on automobiles from Melrose (Oakland), Calif., and Decoto, on the Western Pacific, are the same as the rates from the same points on the Southern Pacific to destinations on the Northern Pacific or the Union Pacific. These rates became effective on October 4, 1959, following the filing of a complaint, which was dismissed at the request of the complainant. The plant for which these rates were published was never built, and thus there have been no movements.

The joint rates on livestock were established as a result of our order in *American National Live Stock Assn.* v. *Atchison, T. & S. F. Ry. Co.*, 122 I.C.C. 609, and subsequent reports. The class rates were established in 1956 following our order in *Class Rates, Mountain-Pacific Territory*, 296 I.C.C. 555. There were no movements of livestock or of class-rated traffic over these routes in 1960.

In addition to the foregoing movements, a total of 19 carloads in 1959 and 11 carloads in 1960, of government and commercial traffic were handled over the routes sought between the considered points. The rates charged are not shown, but it is reasonable to assume that they were on a combination basis.

---

[5] The complaint was dismissed after the parties advised that they had reached a satisfactory rate adjustment.

The Bieber-route movement.—The complainants use the Bieber route in transporting traffic between points in western transcontinental territory. During the 5 years beginning [fol. 854] with 1955, this route was responsible for approximately 20 percent of the Western Pacific's total freight revenues. This territory produced about 50 percent of the freight cars handled by the Western Pacific and 38 percent of its freight revenues. Excluding the joint movements with the Santa Fe, the Western Pacific's revenue per car in 1959 averaged $169.63 northbound and $171.86 southbound over the Bieber route. It estimates that its revenues per car would average about $144 northbound and $146 southbound if competitive rates were established over the routes sought.

More than 50 percent of the cars moving over the Bieber route are between points on the Great Northern and points on the Santa Fe. For the five-year period above mentioned, the annual average was 30,982 cars over the Bieber route and 7,226 over the Southern Pacific route. In 1959, the traffic moving via the Bieber route in connection with the Santa Fe produced for the Western Pacific revenues per car of $126 northbound and $116 southbound. The Western Pacific estimates that its revenues per car would average about $101 northbound and $93 southbound if competitive rates were established over the routes sought in connection with the Santa Fe.

The traffic and rail service here concerned.—The Pacific Northwest and California have, in the last 20 years, increased their population, consumption, and production at a rapid rate, and continued growth is expected. The complainants urge that rail service in this territory must be expanded to meet this economic growth, and that there is need for the competitive routes through Portland. The Portland Freight Traffic Association, made up of various civic bodies and some 150 large shippers in Oregon and Washington, stress that the routes and rates sought by the complainants would materially assist in the greater industrial development of the Pacific Northwest, provide for a greater

[fol. 855] and more complete competitive rail system, and generally assist in the economic growth of this area.

The Western Pacific has improved its transportation plant to keep pace with the economic growth mentioned, but it is moving only about 75 percent of the volume handled by it in its heaviest war year, 1945, when the line was not as well maintained as it is today. It is ready, willing, and able to meet any demand for service over the route sought through Bieber. Along its line it has some 30 different areas of about 4,500 acres of potential industrial land. It competes for industrial plants with other carriers in California, and in the absence of joint rates and routes to and from points in Oregon, Idaho, and Washington, it maintains it has had difficulty in attracting industries to its lines. Of the 100 industries which located along its lines in the past three years, 85 are served, through switching arrangements or otherwise, by the Southern Pacific, and 70 of these also by additional railroads. Attempts to locate several new industrial plants along its lines were unsuccessful because of a need for service to points in the Northwest on the Union Pacific, the Northern Pacific, or their connections, and joint rates were not available. In the last 30 years the complainants have been unable to obtain traffic from industries served by these defendants. A survey of 142 such industries indicated that more than 25,000 carloads are moving annually which are not available to the complainants because of the lack of competitive rates. About 2,250 carloads originate or terminate on the lines of the complainants and move to or from points at noncompetitive rates.

The Longview Fibre Company has plants at Longview and Seattle, Wash., Oakland, Los Angeles, and other points. From Longview, except for the single-line route of the Union Pacific to Los Angeles, on shipments to California, [fol. 856] it is restricted to routes embracing the Southern Pacific. It urges that the routes sought would make available more empty cars and give rise to faster, more efficient, and more flexible service. However, this shipper may now use five routes to California, consisting of the Union Pacific direct, the Union Pacific to Portland and the Southern

Pacific beyond, the Northern Pacific to Portland and the Southern Pacific beyond, the Great Northern to Portland and the Southern Pacific beyond, and the Great Northern to Bieber and the Western Pacific beyond.

Centennial Mills, Inc., owns and operates flour mills at Spokane and Portland. Its grain is supplied from Washington and Oregon, and moves to Spokane and Portland over the Union Pacific, the Northern Pacific, or the Spokane, Portland, & Seattle Railway Company (SP&S). Only limited quantities originate on the Great Northern in Washington for the reason that few grain elevators are located along that road. This company's flour and millfeed are sold in California at the Portland price, plus a transit balance of 44.5 cents per 100 pounds, based on rates on eastern Washington grain, to northern California, and 52 cents, based on rates on Montana wheat, to southern California. The latter presents no problem to this shipper, since the Montana wheat generally originates on the Great Northern, but at times it secures Great Northern wheat only to find that the transit balance to northern California exceeds 44.5 cents. Also, on shipments to destinations in northern California on the Western Pacific, there is an occasional shortage of Great Northern transit billing from Washington; as a result, this shipper must use the Montana transit billing and absorb the 7.5-cent difference. Centennial desires the routes and rates sought by the complainants, because they would provide greater flexibility to its transit operations and eliminate the 7.5-cent penalty.

The plant of the Pacific Coast Paper Mills, at Bellingham, Wash., is located on the line of the Great Northern, but [fol. 857] it is also served by the Northern Pacific through switching arrangements. It prefers to use the Bieber route to California which it has found to be faster. However, it has used the Southern Pacific route because of car shortages on the Great Northern. It feels the Northern Pacific's participation in joint rates through Bieber would increase the number of available cars and eliminate the penalty when shipping over the Northern Pacific through Bieber. It states also that the routes sought would facilitate delivery.

The Consolidated Dairy Products Company is located at Seattle on the Northern Pacific but is also accessible to the Great Northern through switching arrangements. The switching at Seattle takes 24 hours, but faster service over the Bieber route makes up for this delay. Consolidated believes that the competitive rates and routes through Bieber would eliminate the delay, since the Northern Pacific would move the shipments to Portland; and that they would increase the rail competition between carriers, resulting in better and more flexible rail service. Moreover, the Northern Pacific has provided for storage and repacking-in-transit privileges at Seattle, and Consolidated could ship butter from Ellensburg, Wash., to California points over the routes sought by taking advantage of these transit privileges at the joint rates not now applicable over such routes from and to these points. In 1959 and 1960, this company used the Bieber route for one-third of its shipments to Los Angeles with the balance moving over the Southern Pacific route.

The American Pipe and Construction Company of Portland purchases steel raw materials for fabricating at various points, including Kaiser, Calif., which is served by the Santa Fe and Southern Pacific. Steel purchased at Kaiser and shipped to Portland by the Southern Pacific can be fabricated in transit and then shipped over the Great Northern, the Union Pacific, or the Northern Pacific. The route through Bieber is used in some instances, but then [fol. 858] the steel fabricated at Portland must move to points on the Great Northern. This shipper must keep constant check on the inbound movements to Portland in order to know what steel products can be shipped beyond to points on the Union Pacific or the Northern Pacific. It would be to the advantage of this shipper if it were relieved of the present complexities in transit operations brought about by the failure of these lines to provide competitive routes and rates.

The foregoing is representative of the testimony presented by 15 shippers in the forest products, pulp, grain

products, cottonseed meal, paper, paper articles, food, and iron and steel industries. They support the complainants. "The defendants stress that these shippers have been aware of the lack of joint rates and through routes through Bieber for the last 31 years and have not submitted a written request to the defendants for relief. However, some verbal requests have been made. In the last six years only one shipper requested the Northern Pacific to establish joint rates through Bieber, and that request was handled to the satisfaction of the shipper."

Operating routes north of Portland.—The SP&S, which owns the Oregon Trunk Railway and the Oregon Electric Railway, is owned and under the common management and control of the Northern Pacific and the Great Northern. As material here, it has a water-grade line north of the Columbia River, extending east and west, between Portland and Spokane through Vancouver, Wishram, and Pasco, Wash., with the north-south line of the Oregon Trunk extending between Bend, Oreg., and Wishram, through Oregon Trunk Junction, Oreg. The SP&S is a party to the joint rates with the Southern Pacific, interchanging at Portland, and is used by the Northern Pacific as an alternate route between Portland and points on the Northern Pacific east of the Cascade Mountains, Yakima, Wash., and east, the interchange between the SP&S and the Northern Pacific [fol. 859] being at Pasco or Spokane. This results in more economic and expeditious service than over the longer route of the Northern Pacific through Auburn, Wash., and is requested by some shippers. Unless transit or some other reason requires use of the longer route, traffic brought into Pasco by the Northern Pacific for movement beyond to points in California is turned over to the SP&S.

The Great Northern uses the lines of the Oregon Trunk and SP&S under car-haul contracts, and in transporting over the Bieber route, operates over the lines of these carriers between Bend and its connections with the SP&S at Vancouver, on the west, and Fort Wright Junction (near Spokane), Wash., on the east. Traffic over the routes sought would be handled over the SP&S to Portland.

Under the routes sought, the Northern Pacific would be unable to use the shorter SP&S route between Portland and Pasco. Instead, it would use its more circuitous route through Auburn for movement to points east of the Cascade Mountains. The complainants argue that the defendants could handle the traffic from Portland the same as it is handled over the Southern Pacific route. However, it would not be so routed and would require a backhaul over the SP&S between Wishram and Portland. The route sought over the Northern Pacific from Portland, to Spokane, for example, would require a movement over the SP&S of 106 miles west from Wishram to Portland, and 533 miles over the Northern Pacific through Auburn to Spokane, or 639 miles, whereas from Wishram east over the SP&S to Pasco, thence the Northern Pacific to Spokane, the distance is 271 miles. Thus, the route sought to Spokane on the Northern Pacific is 368 miles longer than over the lines of these carriers east from Wishram to Spokane, and would require crossing the Cascade Mountains at an elevation of 2,837 feet.

[fol. 860] The route of the Union Pacific from Portland sought herein to Spokane, for instance, requires a westward movement from Wishram over the SP&S through Vancouver to Portland, thence the Union Pacific in an eastward direction along the south bank of the Columbia River through Oregon Trunk Junction, which is across the river from Wishram. These westward and eastward movements aggregate slightly more than 200 miles.

From San Francisco to Walla Walla, Wash., on the Northern Pacific, the route sought through Bieber and Portland, thence the Northern Pacific is 1,339 miles, whereas the route of the Southern Pacific to Portland, thence the SP&S to Pasco and the Northern Pacific to Walla Walla is 1,014 miles. The distance using the Southern Pacific to Portland and the Northern Pacific through Auburn and Pasco is 1,170 miles; and through Bieber and Bend, thence the Oregon Trunk, the SP&S to Pasco, and the Northern Pacific to Walla Walla, the haul is 971 miles, or 368 miles shorter than the route sought.

The routes sought to points west of the Cascade Mountains would require a movement from Vancouver to Portland and return to Vancouver, a distance of 20 miles. This distance, although short when compared to the longer distances and out-of-line movements east of the Cascades, represents costly and wasteful transportation to and from Portland, as substantial bridge mileage is involved.

The Portland Transfer.—Cars moving over the routes sought herein (for convenience the northbound movement will be used) from points in California would be interchanged at Portland by the Union Pacific or the Northern Pacific and the Great Northern. The cars would arrive on the tracks of the SP&S; they would be yarded at its Vancouver yard for classification, and those for the Northern Pacific and the Union Pacific would be transferred by the [fol. 861] SP&S service to the Northern Pacific Terminal Company's[6] Lake yard. This yard is 8 miles from the Vancouver yard across the Columbia River and Willamette River Bridges. The cars for the Northern Pacific would be interchanged at the Lake yard, and there is no indication that such interchange would differ from that between the Northern Pacific and the Southern Pacific.

At the Lake yard, the cars are inspected by the Northern Pacific Terminal Company's mechanical forces, and those for the Union Pacific are transported about 2 miles by the terminal Company to its Depot yard, where the cars are given prescribed air tests and then transferred to the Union Pacific. The crews and engines of the latter company move the cars about 2.5 miles over the Steel Bridge[7] spanning the Willamette River to the Union Pacific's Albina yard,

[6] The Northern Pacific Terminal Company is a switching railroad owned jointly by the Union Pacific and the Southern Pacific. However, 25 percent of the Northern Pacific Terminal Company's Lake yard at Portland is owned by the Great Northern and 75 percent by the Northern Pacific.

[7] The Steel Bridge is jointly owned by the Union Pacific and the Southern Pacific. Maintenance and operation of the bridge is supervised by the Union Pacific, but the expense is divided among railroads making use of it on the basis of cars moved over it.

where the trains are made up. Thus, between Vancouver and the Albina yard, a car moves about 12.5 miles, and the elapsed time averages 13 hours and 20 minutes. For this movement the cost to the Union Pacific is $3.69 per car, or $3.25 to the terminal company and 44 cents for handling over the Steel Bridge.

Cars moving from points in California over the Southern Pacific route for interchange with the Union Pacific at Portland are delivered to the Southern Pacific's Brooklyn yard in groups arranged in transit for easy transfer to the Union Pacific's Albina yard. These yards are in Portland, about 4.5 miles from each other. The transfers are made by the Southern Pacific's engines and crews in about [fol. 862] 45 minutes, and the cars are delivered in time for the Union Pacific's outbound movements. In this transfer, the car moves about 4.5 miles, and the elapsed time averages 3 hours and 20 minutes between arrival at the Brooklyn yard and delivery to the Albina yard. The cost to the Union Pacific for this service is 46.88 cents.

Operating routes south of Portland.—In most instances, the Bieber route between points in California considered herein and Portland is longer, has more interchanges, goes through more engine districts, and has higher rises and more curvature than the Southern Pacific route. From Los Angeles to Portland, for example, the Southern Pacific route (direct) is 1,098 miles long, with one interchange; the Bieber route (Santa Fe-Western Pacific-Great Northern) is 1,313 miles long, with three interchanges. The Southern Pacific route encounters 9 engine districts; the Bieber route 12. These respective routes have total curvatures of 47, 613 and 58,722 degrees; respective rises of 12,560 and 14,324 feet; aggregate rises of 27,689 and 32,357 feet; and a maximum rise in 1 mile of 138 and 176 feet. From Stockton to Portland, the same routes are 702 and 788 miles long.

From San Francisco to Portland, different routes are used for carload and less-than-carload traffic. Since joint

class rates, which usually apply on less-than-carload traffic, have been established, the latter routes need not be considered. The Southern Pacific route is 801 miles long with one interchange; the Bieber route, using the Western Pacific, is 880 miles long with two interchanges, but in connection with the Santa Fe, it is 866 miles with three interchanges. The Southern Pacific route encounters 8 engine districts, and both Bieber routes encounter one barge movement and 8 engine districts. The Southern Pacific route, and two Bieber routes have total curvatures, respectively, of [fol. 863] 38,028, 47,094 and 45,933 degrees; respective rises of 8,165, 8,753, and 8,367 feet; aggregate rises of 19,381, 21,121, and 20,539 feet; and a maximum rise in 1 mile of 131, 133, and 133 feet. The above figures indicate the transportation conditions are more favorable over the Southern Pacific route than over the Bieber route between Portland and points in California.

The Southern Pacific, using western-district costs and Rail Form A, developed out-of-pocket costs over the Bieber route which exceed those over the Southern Pacific route to Portland by 25 percent from Los Angeles and 15 percent from San Francisco. According to the Southern Pacific, these cost data do not take into consideration differences in such matters as total degrees of curvature, feet of rise, and total rise, which it is claimed would result in greater differences in favor of its route.

Transit time.—A car moving from Los Angeles to Lewiston, Idaho, over the Southern Pacific to Portland, thence the SP&S to Pasco, and the Northern Pacific beyond, would be in transit approximately from 8 a.m. Monday to 3 a.m. Friday, and over the same route to Walla Walla to 7 a.m. Friday. Using the Northern Pacific through Auburn, the time would be about 24 hours longer, and this would be true over the route sought. The fastest route between these points is through Bieber, thence the Oregon Trunk to Wishram, the SP&S to Pasco, and the Northern Pacific beyond, which under favorable conditions would be 24 hours less than over the fastest Southern Pacific route,

and 48 hours less than the route sought. From Los Angeles to Seattle, the shortest time over the Southern Pacific route in connection with the Union Pacific is 44 hours, which is 26 hours less than over the route sought. From Spokane to Los Angeles using the Union Pacific, the shortest time over the Southern Pacific route would be 55.5 hours, whereas it would require at least 81 hours over the Bieber route.

[fol. 864] *Short hauling the defendants.*—The defendants contend that the establishment of the routes sought would short-haul them in violation of section 15(4) of the act. As shown herein, the SP&S is under the common control and management of the Northern Pacific and Great Northern.[8] The routes which the complainants seek to establish would require the Northern Pacific to exchange traffic with the Great Northern at Portland despite the fact that the SP&S and the Oregon Trunk extend beyond to Bend. The Union Pacific also operates for 246 miles between Portland and Bend, and it connects with the Great Northern at the latter point. If the routes sought were established, it would be required to interchange traffic with the Great Northern at Portland, which would short-haul it by 246 miles on every movement.

Discussion and Conclusions

The complainants rely primarily on the alleged violation of section 3(4) of the act. That section requires equality of treatment between connecting lines, but the equality of treatment is determined by similarity of circumstances and conditions. *Routing, Coal from Origins on Louisville & N. R.*, 313 I.C.C. 752, 758, and proceedings cited therein.[9]

[8] We have held that the SP&S must be regarded, for ratemaking purposes, as a part of the Northern Pacific and the Great Northern systems rather than as an independent line. See *Helix Milling Co., Inc.* v. *Great Northern Ry. Co.*, 287 I.C.C. 77, 78.

[9] Our action was sustained in *Atlantic Coast Line Railroad Co., et al.* v. *United States, et al.*, C.A. 1811, M.D. Ga., April 17, 1962.

The routes sought through Bieber and Portland are longer and involve more difficult operating conditions than the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement.

[fol. 865] Equality is required only between connecting lines. The complainants do not physically connect with the defendants at any point along the Bieber route. The connection is made by the Great Northern at Portland. Insofar as rail carriers are concerned, connecting lines are those carriers having direct physical connections or making up a through route. In *Atlantic Coast Line R. Co.* v. *United States,* 284 U.S. 288, the court found that

> There is no warrant for limiting the meaning of 'connecting lines' to those having a direct physical connection with the Clinchfield. The term is commonly used as referring to all the lines making up a through route.

While the court was construing a lease under section 5(2), the Commission had imposed a condition therein similar to the requirement under section 3(4) that carriers shall not discriminate between connecting lines. This definition of connecting lines was later adopted by the court in *Atchison, T. & S. F. Ry. Co.* v. *City of Chicago,* 240 F (2d) 930, 937, in connection with the application of section 3(4).

According to this view, the complainants would be connecting carriers with the defendants at Portland only if the present routes constitute through routes. The criteria for the determination of whether a through route exists are set out in *Thompson* v. *United States,* 343 U.S. 549, 557, as follows (the quotation is from the Commission's 21st Annual Report to Congress):

> . . . Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents

permit the filing of a petition (submitted therewith) for further hearing, and replies thereto, filed February 11, 1963; (2) petition, filed March 21, 1963, of complainants for reconsideration of the report and order of Division 2, decided July 26, 1962, and for oral argument, and replies thereto of Union Pacific Railroad Company and Southern Pacific Company, filed April 29, 1963; and (3) petition, filed May 13, 1963, of Northern Pacific Railway Company, et al., for leave to file a reply (submitted therewith) to the said petition for reconsideration:

It is ordered, That complainants' petition for leave to file a petition for further hearing, and the defendants' petition for leave to file a reply to complainants' petition for reconsideration, be, and they are hereby, granted;

And it is further ordered, That the petition for further hearing, and the petition for reconsideration and request for oral argument, be, and they are hereby, denied for the reason that sufficient grounds have not been presented to warrant granting the action sought.

By the Commission.

HAROLD D. MCCOY
Secretary

(Seal)

named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.

In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service.

[fol. 866] In *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I.C.C. 313, the Commission held that proof of one shipment on a through bill of lading over a particular route was not sufficient to show the existence of a through route, because, as noted by the court, in the above-cited case, "* * * one shipment was not representative of the carriers' course of business." In *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U.S. 321, the Court held that the evidence before us in *Denver & R. G. W. Co.* v. *Union Pac. R. Co.*, 287 I.C.C. 611 did not compel a finding that through routes were in existence. The evidence indicated, as noted on page 618 of our report, that 55 shipments a year had moved on through bills of lading over the routes sought, as compared with thousands from and to the same points at joint rates over existing routes. The conduct of the major defendant had been to preserve its long haul and keep the route sought closed. It had used the route sought only in compliance with instructions from the shippers or the prior carriers. Thus, we concluded that the 55 shipments over the route sought must be regarded as of an isolated nature and insufficient to show the existence of a through route, since any other holding would constitute an open invitation to any shipper to set aside the provisions of section 15(3) and (4) of the act simply by preliminarily making a shipment or two over the route sought to be opened commercially, a result plainly not intended by the Congress.

In *Chicago, M., St. P. & P. R. Co.* v. *Spokane, P. & S. Ry. Co.*, 300 I.C.C. 453, affirmed in *Chicago, M. St. P. &*

P. R. Co. v. *United States*, 366 U. S. 745, the record indicated that 513 shipments had moved at joint rates over the route sought, but thousands had moved over other available routes subject to joint rates. The traffic was not solicited nor did it move at the higher combination rates over the route sought. We concluded that, with the exception of the above-mentioned shipments, the route sought was not [fol. 867] a through route within the meaning of section 15.

In the instant proceeding, 278 carloads of cast iron pipe moved at joint rates from points on the complainants' lines over routes through Bieber and Portland to points on the defendants' lines in 1959 and 1960. During that time, 30 carloads of government and commercial traffic also moved at combination rates over such routes. However, the defendants have not solicited nor encouraged the movement of traffic over the routes sought, but for more than 30 years have tried to keep those routes commercially closed, except where the few joint rates above mentioned were established. While the complainants have solicited traffic for movement over routes through Bieber and Portland to points on the defendants' lines, those actions do not show a holding out on the part of the defendants to offer through transportation. Thus, the few shipments made at combination rates do not prove the existence of effective through routes. It follows that, except where joint rates now exist, no effective through routes exist between points in California on the lines of the complainants and their connections, and points in the Northwest on the lines of the defendants, through Bieber and Portland. There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4). Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment.

While the complainants have indicated a willingness to rely alone on the alleged violation of section 3(4), they also allege other violations and request the prescription of through routes and joint rates over the routes sought. Section 1(4) of the act requires, among other things, that the

railroads establish reasonable through routes with each other, and just and reasonable rates applicable thereto. Where such routes are not established voluntarily, we have the authority under section 15(3) of the act to prescribe [fol. 868] them whenever deemed by us to be necessary or desirable in the public interest. This authority is restricted by section 15(4), which provides that we "shall not * * * require any carrier by railroad * * * to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route * * *".

As above indicated, there are numerous routes between points in the areas here considered over which joint rates apply. The shippers urge that the rates and routes sought would give them more freedom of choice in the movement of their goods, would improve transportation service, time in transit and car supply, and make available additional transit privileges. "Nothing of record, however, indicates that the existing through routes and joint rates are inadequate to meet the needs of the shipping public. In fact the failure of the shipper witnesses to initiate in the last 31 years a determined campaign to persuade the defendants of the necessity of establishing through routes between points on the complainants' lines in California and points on the defendants' lines in the Northwest, is at least some indication of the adequacy of the existing routes. The expression 'in the public interest' means more than a mere desire on the part of shippers for something that would merely be convenient or desirable for them. This desire must be weighed against the effect on other carriers and the general public. On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present routes."

Additionally, the evidence indicates the routes sought would in many instances short-haul other carriers without

their consent. In the absence of a showing by the com-
plainants that the present routes maintained by the de-
[fol. 869] fendants are unreasonably long or do not provide adequate, efficient, or economical transportation, we are precluded by the provisions in section 15(4) from prescribing through routes.

We find that the failure and refusal of the defendants to establish through routes and joint rates with the complainants through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, is not shown to be unjust or unreasonable, nor to result in discrimination against the complainants in violation of section 3(4) of the act; and that the establishment of through routes and joint rates in connection with the complainants, through Bieber and Portland, is not shown to be necessary or desirable in the public interest.

An order will be entered dismissing the complaint.

COMMISSIONER GOFF concurs in the result.

[fol. 870] ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 26th day of July, A. D. 1962.

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.,

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

This proceeding being at issue upon complaint on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said Division having, on the date

hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission, division 2.

HAROLD D. McCOY,
Secretary.

(Seal)

[fol. 871]

EXHIBIT "B" TO COMPLAINT

[Stamp—Received Jul 31, 1963—Law Department]

ORDER

SERVICE DATE
July 30, 1963

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of July A. D. 1963.

W.G.T.
JUL 31 1963

No. 33679

WESTERN PACIFIC RAILROAD COMPANY et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY et al.

Upon consideration of the record in the above-entitled proceeding, which proceeding has been designated as one involving an issue of general transportation importance, (1) petition, filed January 21, 1963, of complainants for waiver of the Commission's General Rules of Practice to

[fol. 872]

EXHIBIT "C" TO COMPLAINT

[Stamp—Received Aug 11, 1961—Law Department]

W.G.T.
AUG 11 1961

INTERSTATE COMMERCE COMMISSION

Served August 10, 1961

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D.C., and served on all other parties in interest, within 35 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the recommended order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or the effective date thereof is postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 25 days after the final date for filing exceptions. The stated specific time periods apply to all parties and give full effect to Rule 1.21(c) of the General Rules of Practice to the extent, if any, the provisions of such rule otherwise would be applicable to this proceeding. If the recommended order becomes the order of the Commission a notice to that effect will be served on the parties.

No. 33679

THE WESTERN PACIFIC RAILROAD COMPANY, et al.

v.

CAMAS PRAIRIE RAILROAD COMPANY, et al.

Decided .....

Refusal of certain defendants to enter into joint through rates with complainants between points in California and points Oregon, Washington and Idaho while at the same time entering into such rates with a competitor of the complainants found to constitute an unlawful discrimination. Discrimination ordered removed.

Walter G. Treanor for complainants.

L. W. Hobbs, William P. Higgins and *Frank S. Farrell* for defendants in opposition.

Charles W. Burkett, Jr., for intervener in support of defendants in opposition.

Frederick G. Pfrommer, R. Paul Tjosseni and *A. K. Hinckle* for other defendants.

A. R. Allen for intervener in support of complainants.

[fol. 873] REPORT AND ORDER

RECOMMENDED BY JOHN F. WRIGHT, HEARING EXAMINER

On February 10, 1961, the Western Pacific Railroad Company (Western Pacific) and its wholly owned subsidiaries Sacramento Northern Railway (Sacramento Northern), and Tidewater Southern Railway Company (Tidewater Southern), filed a complaint charging the defendants[1] with

[1] The defendants are Camas Prairie Railroad Company (Camas Prairie), Great Northern Railway Company (Great Northern),

violations of sections 1 and 3 of the Interstate Commerce Act. The violations are alleged to occur as a result of the refusal of the Northern Pacific, The Union Pacific and their short line connections to join the complainants and the Santa Fe and The Great Northern in the publication of through routes and divisions between California points and points in Oregon, Washington and Idaho on the same basis as that granted by the said defendants to the complainants' competitor, the Southern Pacific.

By answers duly filed the Great Northern, the Pacific Coast and the Santa Fe stated that they were all willing to establish voluntarily a general line of competitive joint through freight rates as sought by the complainants. At the hearing the Washington Idaho and Montana made a similar statement on the record and expressed its support of the complainants.

The complainants operate 987 miles of railway lines within the State of California. Some of the major points served by them are San Francisco, Oakland, Alameda, San Jose, Stockton and Sacramento.

The relief sought by the complainants is limited to the area of California, Oregon, Washington and Idaho. Relief is specially sought between points in California and points on the lines of the Union Pacific and Northern Pacific and their short line connections in Oregon, Washington and Idaho. The relief would be applicable to the "Inside Gateway", that is, to traffic moving between points in California via Bieber, Calif., and Portland, Oreg., and thence from or to other points in Oregon, Washington, and Idaho.

The Bieber route, or "Inside Gateway", has been in existence since 1931 and was certificated by the Interstate Commerce Commission in *Great Northern Ry. Co. Construction*,

---

Northern Pacific Railway Company (Northern Pacific), Pacific Coast Railroad Company (Pacific Coast), Spokane International Railroad Company (Spokane), Union Pacific Railroad Company (Union Pacific), Walla Walla Valley Railway Company (Walla Walla), Washington, Idaho & Montana Railway Company (Washington Idaho & Montana) and the Atchison Topeka & Santa Fe Railway, (Santa Fe).

166 I.C.C. 3, 170 I.C.C. 399. It is one of two major railroad [fol. 874] routes through Portland that serve California generally and the Pacific Northwest. The route of the "Inside Gateway" consists of the lines of the Santa Fe, Western Pacific, and the Great Northern.

The second major route is made up of the Northern lines and the Southern Pacific. South of Portland this route is either single line via the Southern Pacific or in conjunction with Santa Fe south of Stockton.

There is another route which serves Southern California but not The Central or Northern Areas. This is the Union Pacific from the Pacific Northwest through Salt Lake City, Utah, and thence to Southern California.

Since the construction of the "Inside Gateway" in 1931 the complainants have participated with the Great Northern in a full line of joint rates via Bieber between points in California and Portland, Oreg., and thence to other points on the lines of the Great Northern in Oregon, Washington and Idaho. These rates are competitive since they are generally the same as those published by the Great Northern with the Southern Pacific via Portland, Oreg., and with the joint rates published by the Northern Pacific and Union Pacific via Portland with the Southern Pacific.

The Southern Pacific and the complainants both serve Northern California generally and have many common points.

The Northern Pacific maintains joint rates with the Southern Pacific via Portland between points in California and points in Oregon, Washington and Northern Idaho. It has an interchange at Portland with the Great Northern but refuses to publish rates via Bieber in connection with the complainants.

The Union Pacific has joint rates with the Southern Pacific between points in California and points on its line in Oregon, Washington and Idaho. It declines to participate with the complainants from or to the same points via Portland and Bieber over the present routes in effect between the Great Northern and the complainants although

the Great Northern connects with the Union Pacific at Portland.

The result of this rate situation is that between points in California and points in the Pacific Northwest when either the Southern Pacific, the Union Pacific or the Northern Pacific participate in a routing with the complainants, in most instances, combination rates higher than the joint through rates are applicable. Naturally this precludes shippers from using the "Inside Gateway" from or to such points.

The complainants are even deprived of traffic which they themselves originate. A good example is a shipper at Sacramento located on the Western Pacific. This shipper had [fol. 875] made numerous carload shipments to Pacific Northwest points exclusive to the Northern Pacific and the Union Pacific during 1959. The traffic moved via the Southern Pacific because of the higher combination rates which would be applicable via Bieber.

In 1960 the shipper applied for through competitive rates via Bieber to destinations on the Northern and Pacific and Union Pacific and their short line connections. In its application the shipper stated that the use of the existing route via Southern Pacific to Portland imposed additional transportation charges over and above those that would apply if the rates were established via Bieber. The additional charges were the Western Pacific's charges for the switch from the shipper's plant to the interchange with the Southern Pacific. These were not absorbed because the traffic was non competitive under the terms of the Southern Pacific's tariff.

Early in 1961 the Southern Pacific satisfied the shipper by making an exception to its general practice of absorbing switching charges only on competitive traffic. It amended its tariff to provide for absorption of the switching charge at Sacramento. This reduced the shipper's transportation costs to the through rate level and at the same time effectively prevented the complainant Western Pacific from participating in line haul traffic originated on its own line.

The "Inside Gateway" carries considerable traffic to and from Northern California and beyond. The Santa Fe forms the southern segment of the route. During the five year period 1955 to 1959 the bridge traffic hauled by the Western Pacific ranged from 28,655 to 34,077 carloads. Nevertheless the route is not used to its full capacity. It carried much more traffic during World War II. The complainants' witnesses estimated that because of the lack of joint through rates via Bieber the complainants have been foreclosed from participation in the line haul handling of approximately 25,000 cars per year.

The complainants presented the testimony of 15 shippers. The witnesses represented diverse industries as well as various freight traffic associations. In the main, their testimony was that an additional route would improve railroad service and would avoid any further competitive damage because of the penalties incurred when shipping to points on the complainants' lines. Some of them have found that service via the "Inside Gate", when shipping to and from Great Northern points, to be faster than the Southern Pacific route. They also testified that the additional route would create greater flexibility for transit users.

The defendants interrogated most of these witnesses as to whether or not their testimony had been solicited by the complainants. On brief they endeavored to minimize the testimony of the witnesses because it was solicited. The fact that the testimony was solicited does not of itself affect its weight. The evidence submitted by such witnesses is helpful to the Commission and should be encouraged.

[fol. 876] The defendants argue, and presented evidence to the effect, that the through routes and joint rates sought are neither desirable nor required by the public interest and that they would result in an inefficient and wasteful transportation service contrary to the national transportation policy. They further contend that the establishment of through routes would violate section 15(4) of the act. They also claimed that, with minor exceptions, there are no through routes existing via Bieber between points in California and points on the defendants' lines.

Relying on *Chicago, N., St. T. & P. R. Co.* v. *Spokane, P&S. Ry., Co.*, 300 I.C.C. 453 they say that the existence of joint through rates on only two commodities, that is, pipe and automobiles, does not evidence the existence of through routes on any commodities other than those specifically covered by the published tariff. In addition to those commodities the Commission has heretofore prescribed joint rates via the Bieber route for livestock and class rated traffic.

On brief, the complainants, without waiving their allegations of unjustness and unreasonableness based on section 1(4) of the act, directed their entire argument to the violation of section 3(4), the unlawful discrimination. The mentioned defenses raised by the defendants relate primarily to issues involving sections 15(3) and 15(4) of the act. In the examiner's view of this proceeding problems involving those sections of the act are not reached.

"The defendants in opposition interchange traffic at Portland in the haul of which the complainants participate via Bieber, at competitive joint through rates insofar as cast iron pipe, automobiles, livestock and class rated traffic are concerned. The same facilities used for these interchanges are employed in connection with such higher combination rated traffic that moves via Bieber. There is no difference in the manner of interchange. Nevertheless, the defendants in opposition refuse to participate at competitive rates in an interchange of other traffic at Portland in which the complainants participate via Bieber. At the same time they afford the complainants' competitor, the Southern Pacific, a full line of joint through rates via Portland. There is no justification in this record for such treatment of a connecting line. The granting of a full line of rates to one railroad at an interchange point while at the same time limiting the extent of such rates to the favored line's competitor is the essence of discrimination. It is the type of unlawful discrimination that section 3(4) of the act aims to prevent. It is, of course, a matter for the defendants in opposition, in the discretion of their management, to determine the means of eliminating the unlawful discrimination."

The examiner finds and concludes that the defendants' refusal to interchange traffic at Portland, other than cast [fol. 877] iron pipe, automobiles, livestock and class rated traffic, in the line haul of which the complainants participate via Bieber, at rates competitive with those afforded the Southern Pacific by them is an unlawful discrimination in violation of section 3(4) of the act and should be removed.

Premises considered it is the ORDER of the examiner that the defendants be, and they are hereby, notified and required to cease and desist, within 45 days from the date this recommended order becomes the order of the Commission and becomes effective pursuant to the provisions of section 17(5) of the Interstate Commerce Act, and thereafter to abstain, from practicing the unlawful discrimination found herein.

By the Commission, John F. Wright, Hearing Examiner.

Dated at Washington, D. C., this 31st day of July, A. D., 1961.

HAROLD D. McCOY,
Secretary.

(Seal)

[fol. 878] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant.

ORDER GRANTING MOTION OF NORTHERN PACIFIC RAILWAY COMPANY, CAMAS PRAIRIE RAILROAD COMPANY AND WALLA WALLA VALLEY RAILWAY COMPANY TO INTERVENE AS DEFENDANTS—November 4, 1963

Upon consideration of the motion of the Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company to intervene as defendants in the above-entitled proceeding and it appearing that said companies were parties in interest in the proceeding before the Interstate Commerce Commission and are entitled to intervene as a matter of right pursuant to Title 28, United States Code, Section 2323, and that the motion to intervene conforms in all respects to Rule 24 of the Federal Rules of Civil Procedure:

[fol. 879] It Is Ordered, That said motion to intervene be and the same is hereby granted and that the Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company are hereby made parties defendants in this proceeding and their joint answer to the complaint herein, attached to said motion, is herewith allowed to be filed herein.

Dated this 4 day of November, 1963.

Alfonso J. Zirpoli, United States District Judge.

[fol. 880] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ANSWER OF INTERVENING DEFENDANTS NORTHERN PACIFIC RAILWAY COMPANY, et al.—Filed November 4, 1963

Come now intervening defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company and in answer to the complaint in this proceeding respectfully state:

I.

That the intervening defendant Northern Pacific Railway Company is a corporation organized under the laws of the State of Wisconsin and is engaged in transportation of property and passengers in interstate and foreign commerce as a common carrier by railroad in the states of Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon and as such is subject to the Interstate Commerce Act (49 U.S.C.A. sec. 1, et seq.).

[fol. 881] II.

That the intervening defendant Camas Prairie Railroad Company is a corporation organized under the laws of the State of Oregon and is engaged in transportation of property and passengers in interstate and foreign commerce as a common carrier by railroad in the states of Idaho and Washington and as such is subject to the Interstate Commerce Act (49 U.S.C.A. sec. 1 et seq.).

III.

That the intervening defendant Walla Walla Valley Railway Company is a corporation organized under the laws of the State of Oregon and is engaged in transportation of property and passengers in interstate and foreign commerce as a common carrier by railroad in the states of Washington and Oregon and as such is subject to the Interstate Commerce Act (49 U.S.C.A. sec. 1 et seq.).

IV.

That these defendants admit each of the allegations contained in Paragraphs I to V, inclusive, of said complaint.

V.

Answering the first paragraph of Paragraph VI of said complaint, these defendants admit that the plaintiff The Western Pacific Railroad Company operates, inter alia, a line of railroad between Stockton and Bieber, California, and that plaintiffs participate in joint through routes over said line of railroad with the Great Northern Railway Company on the north and The Atchison, Topeka and Santa Fe Railway Company on the south between points in California and points in Oregon, Washington and Idaho; that these defendants do not connect with the plaintiffs and do not maintain through routes or joint through rates with the plaintiffs between said points.

Answering the second paragraph of Paragraph VI of said complaint, these defendants admit that plaintiffs com- [fol. 882] menced a proceeding before the Interstate Commerce Commission which is the subject matter of this suit, charging these defendants and other railroads with a violation of Sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C.A. sections 1(4) and 3(4)) and the National Transportation Policy (49 U.S.C.A. preceding section 1(4)).

Except as otherwise admitted, these defendants deny each and every allegation contained in Paragraph VI of said complaint.

VI.

Answering Paragraph VII of said complaint, these defendants admit the allegations contained therein.

VII.

Answering Paragraph VIII of said complaint, these defendants admit that the Interstate Commerce Commission found that the defendants had not violated Sections 1(4) or 3(4) of the Interstate Commerce Act (49 U.S.C.A. sections 1(4) or 3(4)) or any other provisions thereof and therefore ordered the proceeding dismissed; that except as otherwise admitted, these defendants deny each and every allegation contained in Paragraph VIII of said complaint.

VIII.

Answering Paragraph IX of said complaint, these defendants deny that the Report and Order of Division 2 of the Interstate Commerce Commission decided July 26 and served August 2, 1962, is contrary to or in violation of Section 3(4) or any other provision of the Interstate Commerce Act (49 U.S.C.A. section 3(4)); these defendants further deny that said Report and Order is unlawful in any respect and specifically allege that they have fully complied with all provisions of the Interstate Commerce Act (49 U.S.C.A. section 1 et seq.) and that the plaintiffs were accorded a full and fair hearing and that the order which [fol. 883] resulted therefrom is fully supported by adequate findings and conclusions on all material issues of fact or law, which findings are, in turn, based upon substantial evidence of record and that said Report and Order is lawful and valid in all respects and fully complies with Section 8(b) of the Administrative Procedure Act (5 U.S.C.A. section 1007(b)).

IX.

Answering Paragraph X of said complaint, these defendants deny that the Commission's Order dated July 12 and

served July 30, 1963, is in any respect erroneous, arbitrary or capricious or based upon any errors of fact or law and specifically allege that said Order complies in all respects with Section 8(b) of the Administrative Procedure Act (5 U.S.C.A. section 1007(b)) and affirmatively allege that said Order is lawful and valid in all respects.

Wherefore, having fully answered the allegations of the complaint herein, these defendants pray that all relief sought in said complaint be denied and the complaint dismissed and that these defendants be awarded their costs and disbursements herein.

Dated this 21st day of October, 1963.

Vaughan, Paul & Lyons, Varnum Paul, Earl F. Requa, Frank S. Farrell, By Varnum Paul, Attorneys for Intervenor-Defendants Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company.

[fol. 884] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ORDER GRANTING MOTION OF UNION PACIFIC RAILROAD TO INTERVENE AS DEFENDANT—November 26, 1963

This matter coming on before the Court on Motion of Union Pacific Railroad Company to intervene as defendant, and it appearing to the Court that said movant was a party in interest to the proceeding before the Interstate Commerce Commission involving the subject of the complaint

herein; and it further appearing that under the provisions of 28 USCA § 2323 and Rule 24(a) and (c), it is entitled to intervene as an additional defendant as a matter of right;

Now Therefore It Is Ordered that the Motion of Union [fol. 885] Pacific Railroad Company to intervene as defendant be and it is hereby granted; and

It Is Further Ordered that the answer of this intervening defendant presented herewith may be filed with the Court.

Dated: November 26, 1963.

Alfonso J. Zirpoli, United States District Judge.

[fol. 886] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ANSWER OF INTERVENING DEFENDANT, UNION PACIFIC RAILROAD COMPANY—Filed November 26, 1963

Comes now Union Pacific Railroad Company, intervening defendant, and in answer to the complaint filed herein states:

I.

Union Pacific Railroad Company, a Utah corporation, is a common carrier by railroad and is engaged in the transportation of property and passengers in interstate and intrastate commerce in and through the States of Iowa, Nebraska, Kansas, Missouri, Colorado, Wyoming, Utah, Nevada, California, Idaho, Oregon, Washington and Montana, and is subject to the Interstate Commerce Act (49 U.S.C.A., Section 1, et seq.).

II.

That this defendant admits the allegations in paragraphs I, II, III, IV and V of the complaint.

[fol. 887]

III.

Answering the first paragraph of paragraph VI of said complaint, this defendant admits that the plaintiff The Western Pacific Railroad Company operates a line of railroad between Stockton, California, and Bieber, California, and that the plaintiffs participate in through routes and joint through rates over said line of railroad with the Great Northern Railway Company on the north and The Atchison, Topeka and Santa Fe Railway Company on the south between points in Oregon, Washington and Idaho on the north and points in California on the south; that this defendant does not connect with the plaintiffs and does not maintain through routes and, with a limited exception, does not participate in joint through rates with the plaintiffs between said points.

Answering the second paragraph of paragraph VI of said complaint, this defendant admits that plaintiffs filed a complaint before the Interstate Commerce Commission charging this defendant and others with a violation of Sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C.A. Sections 1(4) and 3(4)) and the National Transportation Policy (49 U.S.C.A. preceding Section 1).

Except as otherwise admitted, this defendant denies each and every allegation contained in paragraph VI of said complaint.

IV.

That this defendant admits the allegations in paragraph VII and alleges further that the Hearing Examiner in his Report and Order served August 10, 1961 (attached to complaint as Exhibit C), did not find the existence of a violation of Section 1(4) of the Interstate Commerce Act as alleged by the plaintiffs in their complaint to the Commission, and further did not recommend that the Commission prescribe the through routes and joint through rates sought by the plaintiffs.

[fol. 888]

V.

Answering paragraph VIII of the complaint, this defendant admits that the Interstate Commerce Commission found that the defendants had not violated Section 1(4) or 3(4) of the Interstate Commerce Act (49 U.S.C.A., Section 1(4) or 3(4)) or any other provisions thereof and therefore ordered the complaint dismissed; that except as otherwise admitted this defendant denies each and every allegation contained in paragraph VIII of said complaint, and respectfully refers the Court to the Report and Order of the Commission (attached to the complaint herein as Exhibit A) for the full and complete findings and conclusions reached therein.

VI.

That this defendant denies the allegations in paragraphs IX and X of the complaint and further denies that the Report and Order of the Commission dated July 26, 1962, and bearing service date of August 2, 1962, and the Order of the Commission of July 12, 1963, bearing service date of July 30, 1963, are arbitrary, capricious, erroneous or unlawful for the reasons alleged in the complaint or for any other reason.

Wherefore, having fully answered the allegations of the complaint herein, this defendant prays that the relief sought by the plaintiffs be denied and the complaint be dismissed with costs to the plaintiffs.

Dated this 31st day of October, 1963.

Respectfully submitted,

F. J. Melia, J. H. Anderson, William P. Higgins, 1416 Dodge Street, Omaha 2, Nebraska;

[fol. 889] Robert N. Lowry, Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco 4, California,

Attorneys for Union Pacific Railroad Company, Intervening Defendant, By William P. Higgins, Robert N. Lowry.

[fol. 890] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

[Title omitted]

ORDER GRANTING MOTION OF INTERSTATE COMMERCE COMMISSION TO INTERVENE AS DEFENDANT—December 16, 1963

Upon consideration of the motion of the Interstate Commerce Commission and it appearing that the movant should be granted the leave therein sought, it is ordered that the Interstate Commerce Commission be, and it is hereby, granted leave to intervene in this cause and to participate in the same manner and with like effect as if named as an original party.

Dated, this the 16 day of December, 1963.

Alfonso J. Zirpoli, United States District Judge.

[fol. 891] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
Civil Action No. 41779

THE WESTERN PACIFIC R. Co., et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION,
Intervening Defendant.

ANSWER OF INTERVENING DEFENDANT THE INTERSTATE COMMERCE COMMISSION—Filed December 16, 1963

The intervening defendant, the Interstate Commerce Commission, answers the complaint, as follows:

I.

Admits, for purposes of this action, the allegations in paragraphs numbered I through V, inclusive.

II.

Admits, for purposes of this action, the allegations in the first paragraph numbered VI that the plaintiff, The Western Pacific Railroad Company, operates a line of railroad extending, generally, between Oakland, Cal., via [fol. 892] Stockton, Cal., where it connects with The Atchison, Topeka and Santa Fe Railway Company, and Bieber, Cal., where it connects with the Great Northern Railway Company and no other railroad; that the Great Northern,

the Union Pacific Railroad Company and the Northern Pacific Railway Company serve, among others, numerous points in Oregon, Washington and Idaho, many of them being served by one or more of the railroads; that in California the Western Pacific and Santa Fe are competitive with the Southern Pacific Company for traffic to and from points in Oregon, Washington and Idaho; that the so-called Bieber route, established in 1931, consists of through routes and joint rates maintained by the Santa Fe to Stockton, thence the Western Pacific to Bieber, and the Great Northern beyond; that the so-called Southern Pacific route, which, at places, parallels it, consists of through routes and joint rates maintained by the Southern Pacific to Portland, Oreg., thence the Northern Pacific, Union Pacific or Great Northern, depending upon the carrier serving the northwestern destination; that, with some exceptions, there are no through routes and joint rates over routes consisting of the Western Pacific to Bieber, thence the Great Northern to Portland, and the Northern Pacific or Union Pacific beyond, depending upon the carrier serving the northwestern destination; and that shipments when so routed ordinarily move under combination rates, using the rates from and to Portland; and in all other respects deny the allegations in said paragraph.

[fol. 893]

III.

Admits, for purposes of this action, the allegations in the second paragraph numbered VI that by complaint filed with the Commission on February 10, 1961, the Western Pacific, and its short-line subsidiaries, alleged that the failure and refusal of certain named railroads to establish and maintain, between points in California, served by the Western Pacific or its subsidiaries or in connection with the Santa Fe, and points in Oregon, Washington and Idaho, served by the said railroads, chiefly the Northern Pacific and Union Pacific, joint through rates over routes through Bieber and Portland on the same basis as those maintained by the said railroads in connection with the Southern Pacific

through Portland, violates sections 1(4) and 3(4) of the Interstate Commerce Act, 49 U.S.C. §§ 1(4) and 3(4), and is contrary to the provisions of the National Transportation Policy, 49 U.S.C. preceding §1; and that the Santa Fe, the Great Northern, the Pacific Coast Railroad Company and the Washington, Idaho and Montana Railway Company subsequently indicated their willingness to establish and maintain the routes and rates sought by the Western Pacific; and in all other respects deny the allegations in said paragraph.

IV.

Admits, for purposes of this action, the allegations in paragraph numbered VII.

V.

Admits, for purposes of this action, the allegations in paragraph numbered VIII that the Commission, Division 2, on July 26, 1962, entered the report and order in Docket No. 33679, *Western Pacific R. Co.* v. *Camas Prairie R. Co.*, [fol. 894] attached to the complaint as Exhibit "A", in which, for the reasons given, it found that the failure and refusal of certain named railroads to establish through routes and joint rates with the Western Pacific and its subsidiaries through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, had not been shown to be unjust and unreasonable or to result in discrimination in violation of section 3(4) of the Interstate Commerce Act and that the establishment of through routes and joint rates in connection with the Western Pacific and its subsidiaries, through Bieber and Portland, had not been shown to be necessary or desirable in the public interest; and in all other respects deny the allegations in said paragraph.

VI.

Denies the allegations in paragraph IX, including subparagraphs (a) through (i), inclusive, and paragraph X, including subparagraphs (a) and (b).

VII.

Except as expressly admitted herein, denies each and every allegation of the complaint.

VIII.

In further answer to the allegations of the complaint, denies that the actions of the Commission were unlawful for the reasons specified in the complaint or for any other reason whatsoever and further aver that the report and orders of the Commission under attack are valid in all respects.

[fol. 895] Wherefore, the intervening defendant, the Interstate Commerce Commission, prays that the relief sought be denied and that the complaint be dismissed.

Robert W. Ginnane, General Counsel, Fritz R. Kahn, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Certificate of Service (omitted in printing).

[fol. 896] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—
Filed December 16, 1963

The United States of America, a defendant in the above action, in answer to the Complaint neither admits nor denies the allegations thereof. The United States of America neither supports nor opposes the order of the Commission.

William H. Orrick, Jr., Assistant Attorney General;

Arthur J. Murphy, Jr., Attorney, Department of Justice, Washington, D. C. 20530;

Cecil F. Poole, United States Attorney, San Francisco, California 94101,

Attorneys for the United States of America.

Certificate of Service (omitted in printing).

[fol. 898] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41779

[Title omitted]

ORDER GRANTING MOTION OF SOUTHERN PACIFIC COMPANY TO INTERVENE AS DEFENDANT—December 16, 1963

The motion of Southern Pacific Company, applicant for leave to intervene as a party defendant in the above-entitled action, having come on regularly for hearing, and the Court

having considered said action, and it appearing to the Court that applicant should be permitted to intervene as prayed, and the Court being fully advised in the premises;

It Is Ordered that the above-named applicant for intervention have leave to intervene in this cause, and is hereby made a party defendant to this action, with the right to file pleadings and be otherwise represented herein by counsel in the same manner and with like effect as if named as an original party to this action.

Dated at San Francisco, California, this 16th day of December, 1963.

George B. Harris, United States District Judge.

[fol. 899] Proof of Service by Mail (omitting in printing).

[fol. 900] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant,

and

SOUTHERN PACIFIC COMPANY, a corporation,
Intervening Defendant.

ANSWER OF INTERVENING DEFENDANT SOUTHERN PACIFIC COMPANY—Filed December 16, 1963

Comes Now intervening defendant, Southern Pacific Company, and in answer to the complaint filed herein, states and alleges:

I

This intervening defendant, Southern Pacific Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is a common carrier of freight and passengers by railroad, engaged in interstate commerce, and as such is subject to the Interstate Commerce Act (49 U.S.C.A. § 1 et seq.).

II

This defendant admits the allegations set forth in paragraphs I, II, III, IV and V of the complaint on file herein.

[fol. 901] III

Answering the first paragraph of paragraph VI of said complaint, this defendant admits that it operates a line of railroad between Los Angeles, California, and Portland, Oregon; that plaintiffs operate a line of railroad between Stockton, California, and Bieber, California; and that plaintiffs' line of railroad connects with The Atchison, Topeka and Santa Fe Railway Company at Stockton, California, and with the Great Northern Railway Company at Bieber, California. Defendant alleges that plaintiffs do not connect with defendants Union Pacific Railroad Company, Northern Pacific Railway Company, Camas Prairie Railroad Company or Walla Walla Valley Railroad Company, and that said defendants do not maintain through routes or participate in joint through rates with plaintiffs between points in California, on the one hand, and points in Oregon, Washington and Idaho, on the other.

Answering the second paragraph of paragraph VI of said complaint, this defendant admits that plaintiffs filed a complaint before the Interstate Commerce Commission charging the aforenamed defendants intervening in the within action, and others, with violations of sections 1(4) and 3(4) of the Interstate Commerce Act (49 U.S.C.A. §§ 1(4) and 3(4)) and the National Transportation Policy (49 U.S.C.A., preceding § 1). This defendant alleges that

it was not named as a defendant in said complaint that was filed before the Interstate Commerce Commission, nor was it charged with the violations specified hereinabove, but that thereafter this defendant intervened in that proceeding in support of defendants Union Pacific Railroad Company and Northern Pacific Railway Company.

Except as otherwise admitted, this defendant denies each and every allegation contained in paragraph VI of said complaint.

IV

Answering paragraph VII of said complaint on file here- [fol. 902] in, this defendant admits the allegations contained therein.

V

Answering paragraph VIII of the complaint, this defendant admits that the Interstate Commerce Commission found that defendants had not violated section 1(4) or 3(4) of the Interstate Commerce Act (49 U.S.C.A. § 1(4) or 3(4)) or any other provisions thereof and therefore ordered the complaint dismissed; that except as otherwise admitted this defendant denies each and every allegation contained in paragraph VIII of said complaint, and respectfully refers the court to the report and order of the Commission (attached to the complaint herein as Exhibit A) for the full and complete findings and conclusions reached therein.

VI

Answering paragraph IX of said complaint, this defendant denies that the report and order of Division 2 of the Interstate Commerce Commission, decided July 26, 1962, and served August 2, 1962, is contrary to or in violation of section 3(4) (49 U.S.C.A. § 3(4)) or any other provision of the Interstate Commerce Act; this defendant further denies that said report and order is unlawful in any respect, and specifically alleges that it and all of the other intervening defendants herein have fully complied with all pro-

visions of the Interstate Commerce Act (49 U.S.C.A. § 1 et seq.) and the National Transportation Policy (49 U.S. C.A. §§ 1, 301, 901 and 1001) set forth therein, and that plaintiffs were accorded a full and fair hearing and that the order which resulted therefrom is fully supported by adequate findings and conclusions on all material issues of fact or law, which findings are, in turn, based upon substantial evidence of record, and that said report and order is lawful and valid in all respects and fully complies with section 8(b) of the Administrative Procedure Act (5 U.S. C.A. § 1007(b)).

[fol. 903]

VII

Answering paragraph X of said complaint, this defendant denies that the Commission's order dated July 12, 1963, and served on July 30, 1963, is in any respect erroneous, arbitrary or capricious or based upon any errors of fact or law, and specifically alleges that said order complies in all respects with section 8(b) of the Administrative Procedure Act (5 U.S.C.A. § 1007(b)); and this defendant further alleges that said order is lawful and valid in all respects.

Wherefore, having fully answered, this defendant prays that all relief sought in said complaint be denied and the complaint dismissed, and that this defendant be awarded its costs and disbursements herein.

Dated: December 16, 1963.

Charles W. Burkett, W. Harney Wilson, By Charles W. Burkett, Attorneys for Intervener-Defendant Southern Pacific Company.

[fol. 904] Proof of Service by Mail (omitted in printing).

[fol. 905] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant,

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Intervening Defendant.

ORDER ALLOWING INTERVENTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—January 13, 1964

The Atchison, Topeka and Santa Fe Railway Company, having moved as a matter of right pursuant to the provisions of 28 U.S. Code, Section 2323, for leave to intervene as a defendant in this action and to file its answer to plaintiffs' complaint, a copy of said answer being annexed to the moving papers, and the said motion having come on to be heard before me on the 13th of January, 1964, and the Court having read the Motion to Intervene and support-[fol. 906] ing papers, and counsel for applicant for intervention having appeared in support of the Motion and all parties of record having been served with said Motion, Notice thereof and all supporting papers, and due deliberation having been had therein, now on motion of counsel for applicant for intervention, it is

Ordered that the motion for leave to intervene as a defendant is granted; and it is further

Ordered that the intervening defendant is granted leave to file its answer in the form attached to its motion for leave to intervene.

Dated, San Francisco, California, January 13th, 1964.

Stanley A. Weigel, District Judge.

Certificate of Service (omitted in printing).

[fol. 907] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant,

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Intervening Defendant.

ANSWER OF INTERVENING DEFENDANT TO COMPLAINT—
Filed January 13, 1964

Comes now the intervening defendant, The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as Santa Fe, and files this answer to the complaint.

I.

Admits the allegations of the complaint.

[fol. 908] II.

Alleges that it was named a defendant in the proceedings before the Interstate Commerce Commission because it

would be a participant in the through routes and joint rates which plaintiffs sought to have prescribed by the Interstate Commerce Commission; specifically admits as alleged in paragraph VI of the complaint that in the proceedings before the Commission Santa Fe agreed to join with plaintiffs and other rail carriers in establishing said joint rates and through routes which plaintiffs sought to have prescribed by the Interstate Commerce Commission; alleges that its position remains unchanged and that, although nominally a defendant, it supports the plaintiffs here.

Wherefore defendant The Atchison, Topeka and Santa Fe Railway Company, prays that the relief sought by plaintiffs be granted.

Frederick G. Pfrommer, Leland E. Butler, 114 Sansome Street, San Francisco 4, California, Attorneys for Intervening Defendant.

[fol. 908a] Certificate of Service (omitted in printing).

[fol. 909]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Before: Hon. Charles M. Merrill, Judge, Hon. William T. Sweigert, Judge, Hon. Alfonso J. Zirpoli, Judge.

No. 41,779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendant.

Transcript of Hearing on Motion to Enjoin, Set Aside, Suspend and Annul Order of Interstate Commerce Commission

APPEARANCES:

For the plaintiff: Walter G. Treanor, Esq.

For the United States: Cecil F. Poole, Esq., United States Attorney, By: Charles Elmer Collett, Esq., Robert W. Ginnane, Esq.

For Southern Pacific: W. Harney Wilson, Esq.

For Northern Pacific: Frank S. Farrell, Esq., and Varnum Paul, Esq.

For Union Pacific: Robert N. Lowry, Esq., and William P. Higgins, Esq.

[fol. 910]

ARGUMENT BY MR. TREANOR ON BEHALF OF PLAINTIFF

Mr. Treanor: May it please the Court, the map which has been placed on display before the Court is the map presented by the Northern Pacific, one of the intervening defendants. However, I would like to state that for the most part this map correctly reflects the physical alignment of the railroads involved in this proceeding.

The one exception that I take to the map—and the exception I take is clearly reflected in other maps that are in this proceeding—most importantly Exhibit No. 1 which the plaintiffs introduced before the Commission—and that is that this map does not show in color the important Union Pacific route which extends from this territory through Boise, down through Salt Lake City, and all the way into Los Angeles. That is an extremely important consideration in this proceeding, in our opinion.

[fol. 911] The situation which is presented by this case involves the attempt of the Western Pacific Railroad, the integral middle part of a so-called Bieber Route, to obtain over that route the same level of freight rates as now apply over the Southern Pacific routes—and I say "routes" because the Southern Pacific rates, which are the beneficiary of discriminatory practices, are not limited only to Southern Pacific's single line route, but they also include the joint Southern Pacific-Santa Fe route from Northern California junctions to and from points in Southern California.

Now, when this case was argued before the Interstate Commerce Commission, we originally intended that the discriminatory practices which apply one level of rates in connection with Southern Pacific routes between the Pacific Northwest and California to and from points on the Union Pacific and Northern Pacific were unlawful on several grounds:

First and foremost, they are discriminatory in that they favor one competitive route over another route.

We also originally alleged that those rates which resulted over our route, necessarily made up of high combinations, were unreasonably high and, as unreasonably high, were also a violation of Section 1(4) of the Act.

[fol. 912] Immediately after the oral hearing before the Examiner Western Pacific directed all of its efforts toward the antidiscrimination phase of our case. The Examiner found the presence of discrimination which was prohibited by Section 3(4), and held that it was not necessary to determine whether the rates were also unlawful under other sections of the Act. We have adhered to that position consistently throughout this proceeding, and in this matter before this Honorable Court we have attacked the Commission's order on the basis of the handling of the discrimination phase of the case, and not on the question of whether or not the other provisions of the law were also violated.

We realize that our burden before this Court is not to show that the Commission misevaluated the evidence. We recognize that we must show that they have proceeded on an erroneous statutory interpretation, and that there are not substantial findings in the evidence—rather, not substantial evidence to justify findings which the Commission has made.

First and foremost, the Commission proceeded on the finding that we were not entitled to proceed before them under the provisions of Section 3(4) solely because the route, the Western Pacific portion of the route, extends [fol. 913] from the Bay Area to Bieber. From Bieber north to Portland via either Wishram, Portland or Vancouver the line is served by the Great Northern, and south of the Bay Area it is served by the Santa Fe Railroad. The

Commission held that in the absence of a direct physical connection with the defendants at the common gateway, that we would have to prove that a full level of through routes already existed.

Now, we have challenged that finding as a matter of law, and in researching the problem we found very limited case law on the subject.

From the beginning the plaintiffs have relied upon the decision of the Supreme Court in Chicago, Indianapolis & Louisville v. United States, which is cited at 270 U.S. 287 and is referred to in our brief.

Now, while that case did indeed involve a charge against discrimination in the form of service rather than in the form of a withholding of comparable rates, and even though that case did involve a factual situation where the distance between the complaining line and the discriminating line was no more than the distance of a cross-town switch, we believe that the principles enunciated by the Supreme Court in that case justify the action which we bring here.

The Interstate Commerce Commission and those sup- [fol. 914] porting them have contended that the Supreme Court's later decision in Atlantic Coastline v. The United States, which was decided at 284 U.S. 288, also referred to in the respective briefs, justifies the contention that in the absence of physical connections you must have the existence of through routes.

Now, we have argued at some length on those cases. The plaintiffs take the position that there is nothing in the Atlantic Coastline case which is inconsistent with their position here because the Court in that case was, in the first place, not interpreting any situation under Section 3(4). It was not dealing with discrimination, as a matter of fact, because in reading the case I cannot even find that the Court dealt with the question of discrimination.

The Court found that a particular carrier that was already enjoying through routes was protected by a condition imposed by the Interstate Commerce Commission as a connecting line in approving a lease agreement.

There is one additional point that I would like to mention about those cases at this time which has not been

mentioned heretofore: I think it is significant that both of those cases were decided—the opinion was written by Mr. Justice Brandeis. It is inconceivable, I believe, that had Mr. Justice Brandeis believed that the Atlantic Coast-[fol. 915] line factual situation bore any relationship to the factual situation he had previously determined just seven years prior under the anti-discrimination statute, that he would not have mentioned it. He does recite and call attention in a footnote when he describes connecting lines in that case to a previous decision of his own which was not an anti-discrimination case but was merely a case to determine whether or not a particular transaction was interstate or intrastate in character.

Now, if the same Justice deciding the case did not see any similarity between the two cases, I believe it is a fair assumption, particularly since the facts and circumstances are so different, to say that his pronouncements of the Court's unanimous pronouncement in the Chicago, Indianapolis & Louisville case stands as the law of the land.

Another case referred to, a district court case, which is Atchison, Topeka & Santa Fe v. The City of Chicago, did find in a footnote an adoption of connecting line status in a reference to Section 3(4) as recited in Atlantic Coastline v. United States. However, in that case the issue before the Court was whether the transfer service between passenger terminals in Chicago was subject to the jurisdiction [fol. 916] of the City of Chicago or the Interstate Commerce Commission.

The Court found that the carriers performing this passenger service were obligated as connecting lines to perform this cross-town transfer service, and therefore clearly the Interstate Commerce Commission had jurisdiction.

I respectfully submit that had the question been presented to the court: could one of the connecting railroads which was on the other side of town refused to enter into a joint route with one of the westward or eastward lines while it entered into another, and the issue therefore presented a question of entitlement to bring an action to attack discrimination, that the court would have found little difficulty in applying the doctrine of the Supreme Court which we find in Chicago, Indianapolis & Louisville.

Judge Merrill: Is it your thought that once the carrier has joined in a through route arrangement and joint rate arrangement along one route, that it must thereafter, in order to avoid a charge of discrimination, enter into through routes with all other connecting carriers?

Mr. Treanor: No, sir. I will answer it in this way: First of all, as to the question of entitlement to sue, it might follow that once they have established the through [fol. 917] routes that they can't discriminate against other lines.

However,—and this would follow, no matter how far removed they are, but there is always, as the Commission itself has stressed so strongly in this case, the question not only of entitlement to sue but the test of similarity of circumstances and conditions. So while a carrier somewhat removed, which is already a part of a through route, might —it might be argued that they could bring an action under Section 3(4). They still would have to prove that the circumstances and conditions which apply over their route are such and compare so favorable to the preferred or the beneficiary of the discrimination—the discriminatory practices routes.

Now, in that regard I have noticed with naturally much interest the argument of the Interstate Commerce Commission that we would open the floodgate to actions under Section 3(4). I might say that I don't think that would be such a bad idea if discrimination is being practiced. If this is the only way that you can attack discrimination, this might not be such a bad idea. However, I would like to point out that under their theory, Your Honors, no matter how far removed the carrier is from the point of discrimination, if they in the goodness of their heart, the [fol. 918] discriminating carriers, have seen fit to publish through routes, then that carrier can come in and attack the discrimination. But the man they flatly close the door to, he can't come in at all. So their argument is what opens the door to a Section 3(4) complaint, not ours, because Your Honors, ours is confined to this situation:

We have the Bieber Route, and in evaluating the right of the Bieber Route to proceed to attack discrimination

which is foreclosing it from a tremendous territory, I think we have to look first at: Why was the Bieber Route created, and why was it created as an end-to-end connection of separate carriers rather than permitting one line, say the Great Northern, to build all the way to Southern California to provide competition to Southern Pacific? But the Interstate Commerce Commission very wisely determined—and I think the carriers that were parties to the application wisely determined—that under the mandate of the national transportation policy it was silly to build duplicate physical parallelling facilities all the way the length of the Northwest down to Southern California when one connection, the construction between Klamath Falls and Bieber, would permit all of the benefits of competition to flow without dissipating the carrier's facilities and their resources.

So when the Commission established the Bieber Route, [fol. 919] it gave it a purpose. It said, "Go forth and do unto the Southern Pacific some competition."

Now, the only way that we can do that is if we can seek protection from the discriminatory practices of those lines which shut us off from performing that competition.

Mr. Higgins of the Union Pacific described the routes. He described them essentially correctly. And he showed, and he admits, and no one can deny that there is vigorous competition between the Southern Pacific routes and the Bieber Route. And anything which strangles the competitive efforts between those two carriers should be prohibited under Section 3(4).

We are not saying that under Section 3(4) our connections to the southwest would necessarily be entitled to attack this particular act of discrimination. What we are saying is that the Bieber Route was established as a competing line of railroad, and it was so constructed and has been so operated as a single line of railroad.

The evidence in this case showed the close working of the partners of this route for over 30 years. Therefore, the evil which is being committed here should be attacked, should be subject to attack by the victim.

Now, much has been made of the fact by my opponents [fol. 920] that neither the Santa Fe, our partner to the south, nor the Great Northern, our partner to the north,

has come in here. Nor did they come in before the Commission and introduce evidence. They did. They did confess judgment. They did agree that they would put in the rates we sought, and they did agree that they would pay the division to the northern lines which we thought were equitable, which is the same as what the Southern Pacific is getting.

But the Northern Pacific, and the Union Pacific, and the Southern Pacific overlooked one very important fact. It is only the Western Pacific that can afford the honest, true, full-blooded competition to the Southern Pacific, and only the Western Pacific is shut off because the Southern Pacific joins the Great Northern on the same level of rates as apply over the Bieber Route. So the Great Northern shippers have a choice. This is true. They can ship either by Southern Pacific or the Bieber Route on an equal rate basis.

Union Pacific and Northern Pacific shippers can—they also have a choice. They can either ship Southern Pacific all the way or they can ship Southern Pacific, thence Santa Fe. So Santa Fe and the Great Northern do not have the door of competition closed in their face. And this is why the Western Pacific alone is challenging this prac-
[fol. 921] tice.

Now, in view of the Commission's contention that plaintiffs are attempting to indirectly accomplish via a discrimination complaint what should otherwise be accomplished by other means, perhaps, as they suggest, under Section 1(4), I think an observation of Mr. Justice Brandeis in the Chicago, Indianapolis & Louisville case is most pertinent. With your indulgence I would cite it because we have not previously cited it. Quoting:

> "The steam railroads"—which were the defendants in that case—"contend that, in effect, the order directs them to establish through routes and joints rates, or to allow a common use of terminals; that such extensions of service can legally be made only upon a finding that public necessity and convenience require them, and that without making such a finding the Commission

has, under the guise of a discrimination order, compelled them to extend their service."

The Court disposed of that argument, commenting:

"The order does not require the steam railroads to extend any service to the south shore. It leaves them free to remove the discrimination by any appropriate action."

[fol. 922] End quote.

I might observe that the Examiner in the Interstate Commerce Commission proceedings herein made the same observation as to the allegations which had been raised before him.

Now, the second question, if we are connecting lines, is whether the plaintiffs were entitled to relief because over their route similar transportation circumstances and conditions prevailed. The Commission has asserted in its brief that no matter how bad this decision may be, nor how inconsistent with its actions in other cases, the decision cannot be set aside if there is substantial evidence to support it. We don't challenge that. But there cannot be substantial evidence to support an order where, on the face of the report which we attack, most of the pertinent evidence was not misweighed; it was plain mislaid. It simply was ignored.

Now, unless the Commission considered the evidence in its entirety, it cannot hold that it has reached a conclusion upon substantial evidence. The Commission even at this late stage admits its unawareness of the major evidentiary issues which were urged upon it throughout this proceeding. We have pleaded with them to renew the major controverted issues and they even now say they were not introduced before them.

[fol. 923] The Examiner's factual determinations were apparently rejected, but without any findings of fact which would indicate just where he went afoul even though he heard all of the evidence.

This is not a situation where the facts are not in general undispute—in dispute. The issue is not the evaluation, the weighing of the evidence. This is a situation where the facts are in serious dispute, not as to what they say but as to their very existence. The Commission cannot choose isolated, strongly-contested, bare segments of the record and justify them as substantial evidence.

Now, the test of similar circumstances and conditions have been attacked by the plaintiff on two basic grounds: First, the conclusion which the Commission reached is directly contrary to the record as a whole. Secondly, initial comparative operating difficulty, which has been completely solved, and which in their solving place no burden upon the lines committing the discrimination, may not be used as they were here to justify discrimination. The test must be based upon performance. Yet the Commission ignored all of the evidence of performance and considered only the contention of the Southern Pacific witness, a person who could hardly be expected to be objective in the circum- [fol. 924] stances, that the Bieber Route should not be—should not be as good as all the evidence of performance showed that it was.

Significantly, the Commission even overlooked the fact that in entering its unsupportable supposition, the Southern Pacific had to resort to the tactics of avoiding any so-called comparison which involved any of its routes except those most choicely located for such a showing. And this point was asserted to the Commission continually throughout the proceedings and was ignored.

If it is not already clear from the pleadings, let me please make it clear that plaintiffs are not contending that the Commission should close its eyes to comparative transportation conditions over both routes south of Portland. To the contrary, we are asking them to open their eyes to the evidence which was submitted before them. An appraisal of the whole record shows, in brief, that the Bieber Route is economical, it is efficient and it is profitable, and it proves that not on the basis of a short-range study but in the over 30 years of its existence. It is fully competitive

and is, in fact, a preferred route wherever discriminatory rates are eliminated. And Exhibit 11 in this proceeding, which is ignored by the Commission, shows that where [fol. 925] there is a choice, and the choice exists from points in the Northwest to points on the Santa Fe over Great Northern, Union Pacific or Northern Pacific, for the five full years for which statistics were available prior to this oral hearing before the Commission, over 80 percent of the traffic that had a choice moved over the Bieber Route.

Now, recognizing that perhaps solicitation efforts were stronger in favor of the Bieber Route, recognizing the fact that from territory east of the Cascades the Bieber Route is shorter than the Southern Pacific Route, recognizing all of those factors, a performance of 80 percent over a five-year period where the shipper under the statute has a right to select, if he doesn't like what the carrier did, to select his own routing is certainly an endorsement of the Bieber Route's ability to compete where the prices are equalized.

The Western Pacific is suffering serious, inexcusable damage as the result of the present discrimination. That is what the record shows.

Now, in addition to improperly denying our right to seek relief, and in failing to enter proper findings based upon substantial evidence, the Commission in this case acted in a most arbitrary and capricious manner in its somewhat [fol. 926] cavalier rejection of the testimony of the shipper witnesses in this case. It refused to consider the shipper witness in its true context, namely, what can the Bieber Route do, what does it do, what are the effects, would the shippers use the Bieber Route if it weren't for the rate discrimination problem. All of that was ignored by the Commission. And it rejected this witness, or this testimony, on the grounds that those witnesses who got on the stand and swore as to their need for these rates had not in the past requested Northern Pacific and Union Pacific to voluntarily publish them. The Commission thereby ignored the testimony of those witnesses that the reason that they didn't do it was simply that they had been led to believe that it was an absolutely useless gesture.

After this decision of the Commission came out, if the Commission felt there was any significance to this alleged failure, which had been explained, the Commission before the administrative proceedings were closed certainly should have afforded the opportunity for further hearing so that they could have learned two very important facts; so that they could have learned that once the shipping public knew that the Commission thought this silence was insignificant, they responded in overwhelming numbers.

[fol. 927] Now, we offered to prove this to the Commission before they closed the proceedings, and we also offered to prove that the offer to publish the rate was a sham. And if the opportunity is ever given by the Commission to hear what really happened, we are prepared to show that not a single request was granted.

So therefore, Your Honors, we do contend that substantial justice has not been done here, not because the evidence has been improperly weighed, but because it has not been taken into the Commission's consideration.

I am going to request, with your permission, that I reserve the rest of my time for reply. But I do want to observe that the Chicago, Indianapolis & Louisville case, which answers so many questions here, and should have answered so many questions for the Interstate Commerce Commission, was asserted to them from the opening pleading or brief.

Judge Zirpoli: May I ask a question here? You said that the matter of shipping mainly via Salt Lake City was an important consideration. Why is that so?

Mr. Treanor: Thank you, Your Honor.

The non-discriminatory rates which we are seeking apply via this tremendously-circuitous route by Union Pacific via Salt Lake into Los Angeles.

Judge Zirpoli: Are they getting the same rates that [fol. 928] apply to the shorter route?

Mr. Treanor: Yes, Your Honor. Yes, sir, the same rates apply by the combination Union Pacific, Southern Pacific via Portland, the Union Pacific-Southern Pacific-Santa Fe via Portland, and the Union Pacific all the way.

Judge Zirpoli: Do I understand that if the Great Northern is used from Wishram, the Southern Pacific get the same rate that the combination through Western gets to, let's say, Sacramento?

Mr. Treanor: Yes, Your Honor. From Great Northern points the rates are equalized, from Great Northern points, regardless of which route is used south of Portland or Wishram.

Judge Zirpoli: One of your arguments here is that minimum findings sufficient to meet the requirements of administrative procedure have not been made. Assuming that is true, what do you deem the action of this court should be? Send it back for what purpose?

Mr. Treanor: Ideally, Your Honor, I would hope this Court would find that on the basis of this record the Interstate Commerce Commission cannot find other than that Western Pacific is entitled to bring the action and is entitled to the relief—idealistically.

If the Court does not grant us that relief, it is our prayer [fol. 929] that the Court will send it back to the Commission with instructions to both grant further hearing for the purpose of considering the shipper requests for the rates which have been turned down, and to open the record on the present record as it applies to all other phases of the case, and to enter findings on the record as a whole, because I believe that if the record as a whole is evaluated, the Commission cannot find against us without indicating a clear and arbitrary attitude.

Judge Merrill: Going back to this contention that you are, by proceeding under Section 3(4), securing relief which it is contemplated will be granted under 1(4), I must confess I am still a little troubled by that.

It is my understanding that public need is the prime consideration in the granting of through routes, the prescribing of joint rate arrangements under 1(4). Absent public need, a carrier would have no right to insist upon being included in a through route or insist on joint rates being made for his benefit under 1(4).

But still, as I understand your position, absent public need, if it can be said that the granting of a through route

to one railroad and denying it to another is discriminatory, then this same relief which has been granted under 1(4) can also be secured under 3(4) on the basis of discrimina-
[fol. 930] tion.

Now, is it the same relief you are securing here? And if not, why is it in proceeding to equalize rates, in proceeding, in effect, to secure for yourselves the benefit of joint rates and the benefit of through routes—why is it that you are not securing 3(4) the very relief which 1(4) is designed to give only under circumstances of public need?

Mr. Treanor: The basic difference, Your Honor, is this: Section 3(4) relief is limited to a specific number of circumstances. There has to be discrimination between connecting lines. This does not have to appear in any way under Section 1(4). As a matter of fact, Your Honor, Section 15(4) of the Act which limits the right of the Commission to proscribe through routes, it specifically said that that prohibition, the limitation upon the Commission's right, do not apply under Section 3 where there are Section 3 situations. The statute clearly distinguishes that.

And I think, in view of Your Honor's question, I would like to make very clear why I proceeded originally under both sections of the Act: It is clear that in eliminating discrimination, in causing an end to discrimination, the law leaves it to the offending carrier, when he has been
[fol. 931] found guilty, to eliminate the discrimination by any one of a number of ways. Now, in this particular case, if we had proceeded only under Section 3(4) originally, the Union Pacific and Northern Pacific could have eliminated the discrimination in any one of three ways: they could have discontinued the low level of rates with the Southern Pacific and published with them on the same level that they published with us. That would have eliminated the discrimination. They could give us the same level of rates that now exists over the Southern Pacific. Or they could meet somewhere in the middle. They could raise theirs and lower ours.

Now, it became clear to us that, we believe, the present level of rates which applies over the Southern Pacific is as high as it should legitimately be, and over our Bieber Route

to Great Northern points the rates are the same as the preferred rates to Northern Pacific and Union Pacific points over the Southern Pacific route. So, therefore, we wanted to make it clear at that time that we felt that the highest level of rates which should result from the elimination of the discrimination were those that were already in effect, and if by alleging violation under Section 1(4) we have set any higher level than those which now apply over the Southern Pacific, we would be unreasonably high

Judge Zirpoli: Did you make that argument initially [fol. 932] before the Hearing Examiner?

Mr. Treanor: No, sir. I might say there was no question about it, sir. At any stage of the proceeding there was no— But I will say that subsequent to the Hearing Examiner, and I believe in my petition for reconsideration to Division 2, I told Division 2 that we recognized that the Interstate Commerce Commission could eliminate this discrimination in any one of several ways, but that we felt that the overwhelming evidence of the reasonableness of the present level made it unrealistic for any relief to come except to reduce ours to the same level as the Southern Pacific.

Judge Merrill: Well, isn't this true, that if you prevail, isn't this true, that you would then have a through route, you would then, in effect, have joint rates?

Mr. Treanor: Yes.

Judge Merrill: Then the situation is simply this, as I understand it: If there is a public need for an additional through route, 1(4) is appropriate. If, on the other hand, there is no public need for it, and the only basis for granting it would be on the theory that failure to grant it would be discriminatory because we already have one and another route is unable to compete effectively without also having [fol. 933] the same treatment, then, discrimination being present, the same end can be accomplished under 3(4) without the need for establishing a public need.

Mr. Treanor: Your Honor, if that were true, Congress never would have had to enact Section 3(4) because all of these situations could be attacked through Section 1(4). But Congress clearly contemplated that there would be an

entirely different standard, an entirely different question which would arise.

One of the differences, Your Honor, was the question of short hauling. If you go to a common point of interchange where discrimination occurs, under Section 3 it doesn't make any difference that the offending carrier could carry your traffic to some other point, which would give him a longer haul, and Congress has said that. So therefore it is not intended that Section 1(4) and 3(4) would both reach the same evil.

Now, I do agree without any question, although there is some suggestion in the opposing party's brief, that public interest is of vital consideration in a Section 3 case. It's not just a question of: Is Western Pacific being hurt? The public interest is an overriding interest in a discrimination case.

Judge Merrill: Suppose the fact is that there is no public need for a through route or for a joint rate arrange-[fol. 934] ment, which would go hand in hand. This is a fact. Now, notwithstanding that, it might be that the Commission would feel it would be disadvantageous to the public to have another through route created. But notwithstanding that, I would judge, if discrimination exists with a connecting carrier, that carrier can secure a through route or joint rates in order to be able to eliminate the discrimination.

Mr. Treanor: It can obtain that relief if the offending carrier sees fit to equalize the situation between both carriers in that manner, yes, Your Honor. And it is obvious, I think, that Congress intended that the Commission's concern over whether or not there should be an additional route or not, the Commission's concern was of little moment if discrimination was being practiced because Congress has set up a separate statute and a separate set of rules to eliminate discrimination.

Judge Merrill: Well, let me ask you this. This is what has been puzzling me about it. I probably have a bad habit of trying to simplify situations.

But here we have on the one hand Southern Pacific which does have the benefit of a through route and joint rate arrangement, and on the other hand we have the

Bieber Route which does not have those advantages, and there results a discrepancy in the rates which is prejudicial [fol. 935] to Bieber. Now, if that discrepancy in rates is simply explainable by virtue of the proposition that Southern Pacific enjoys the benefit of a through route and joint rate arrangement, which you concede results in a fair rate, then doesn't the prejudice go out the window? This rate discrepancy is understandable, it is explainable simply on the basis that one route is a through route with the advantages which normally and naturally flow from that fact, and the other one is not and cannot become one because there is no public need for one.

Doesn't this eliminate all question of discrimination?

Mr. Treanor: No, Your Honor, it does not. The answer to the question, first, there is only one reason—only one reason why the through route does not exist between the Bieber Route and the Northern Pacific and Union Pacific points, and that is the arbitrary refusal of those lines to treat us the same as they treat our competition.

Judge Merrill: But it's not arbitrary, is it, if it has been determined by the Commission, as I understand it has been here, that there is no public need for it? If there is no public need for it, is there an obligation on the part of [fol. 936] the offending carriers to treat you in a similar fashion?

Mr. Treanor: Section 3(4) would indicate there is.

Judge Merrill: Well, Section 3(4) says that every character that complains he is prejudiced or discriminated against by the fact that one route, the through route, can impose a through route irrespective of the public need or, perhaps, the public injury that might result from it, wouldn't that be true?

Mr. Treanor: No, Your Honor, because the safeguards built in against that situation which you have just mentioned is the very sound test of similarity of circumstances and conditions which must prevail over the discriminated route and the preferred route. That prevents the situation that you have indicated concern about.

Judge Merrill: Well, suppose it is not in the public interest to have two through routes competing with each other.

Mr. Treanor: I will confess, Your Honor, if it is not in the public interest for the West Coast of California, Oregon and Washington to have the benefit of at least two competing routes, then we have no hope of relief.

Judge Merrill: Well, suppose north of Portland that is the situation, that if there were two routes competing up [fol. 937] there, that they might destroy each other and it might be that the truck lines would take over, and this is felt by the Commission not to be in the public interest. I don't know what all considerations go into it. But it does seem to me that the Commission constantly is making determinations that free competition is not in the public interest, or free competition does not require a determination that that the granting of a through route is in the public interest. Isn't it done quite frequently?

Mr. Treanor: I know of no case, in all sincerity, in the Commission's history where they have come up with a decision on facts like this and to have held as they did here. I don't believe that this decision is consistent with a single past action of the Commission, and I honestly believe, Your Honor, that it is not consistent with what they have done since.

I honestly believe that the presiding commissioner in this case decided that we were not a connecting line and everything else became immaterial to him. I sincerely believe that. And I think that is the only way you can justify the treatment of the record.

And I do submit that if we are a connecting line, then there is no way he could have held except to hold that we are entitled to the protection of that act under the test [fol. 938] of similarity of circumstances and conditions.

Thank you, Your Honor.

* * * * * * *

ARGUMENT BY MR. GINNANE ON BEHALF OF INTERSTATE COMMERCE COMMISSION

Mr. Ginnane: May it please the Court, my name is Robert Ginnane. I am general counsel for the Interstate Commerce Commission for whom I am appearing.

Your Honors, Mr. Collett has asked me to correct the statement that he made to you when he presented me to the Court. He said that I was representing the United States Department of Justice. I am not representing the Department of Justice because it has taken a neutral position in the case.

Judge Merrill: I was wondering what its position was in this court. As I understand it, before the Commission it has aligned itself with Western Pacific; is that correct?

Mr. Ginnane: I believe it sought to.

[fol. 939] Mr. Wilson: It sought to by way of intervention, Your Honor, at a very late stage.

Judge Zirpoli: It filed a brief in support of its position, didn't it?

Mr. Wilson: It filed pleadings and papers with the Commission in an attempt to intervene in Western Pacific's support right at the very end of the case.

Mr. Ginnane: Before the Commission, the Western Pacific contended that refusal of Northern Pacific and Union Pacific to enter into joint rates with it on the same basis as it dealt with Southern Pacific ratewise violated the command of Section 1, paragraph 4, of the Interstate Commerce Act that every railroad establish reasonable through routes with other such carriers, and just and reasonable rates. Now, that claim invoked the Commission's powers under Section 15, paragraphs 3 and 4, which originated in the 1906 amendments to the Hepburn Act, to establish through routes and prescribe joint rates over such routes when required by the public interest.

Also, Western Pacific contended that the failure and refusal of Western Pacific and Northern Pacific to establish such rates with it violated Section 3(4), which provides that railroads shall not discriminate in their rates, facts and charges between connecting lines.

[fol. 940] It doesn't say "Route," may it please the Court; it says "between connecting lines."

In this court Western Pacific has wholly abandoned its contention that the course of action of Northern Pacific and Union Pacific violated Section 1(4); and that means,

despite the confusion which persists in Western Pacific's pleadings, working in the "sugar" testimony, that this case as before this Court does not involve shipper interests, it involves only competitive struggle between carriers.

Judge Zirpoli: May I ask a question? Assuming we were to conclude that the Bieber Route constituted a connecting line route, what would you say? If we were to conclude that.

Mr. Ginnane: If you were to conclude two things, that Western Pacific is a connecting line with U.P. and Northern Pacific, and if you found also that the circumstances and conditions of the two routes are comparable, then Western Pacific is entitled to the relief which it seeks.

Judge Zirpoli: All right. Is it true that Section 3(4) is designed to preserve competition?

Mr. Ginnane: It was intended to protect connecting lines from rate discrimination.

Judge Zirpoli: Well, for what purpose? To preserve [fol. 941] competition?

Mr. Ginnane: To preserve competition to a limited extent. To limit to some extent the carriers—

Judge Zirpoli: Pardon me. Isn't the real purpose to preserve competition? Isn't that the basic purpose of it?

Mr. Ginnane: Only as between connecting lines.

Judge Zirpoli: Let's assume that. Isn't that the real purpose of it? The real purpose of Section 3(4) is to preserve competition?

Mr. Ginnane: To a limited extent.

Judge Zirpoli: Well, that is what I don't understand, this "to a limited extent."

Mr. Ginnane: Because it applies only to the rate treatment of connecting lines. A railroad is forbidden to discriminate in terms of rates between connecting lines where the circumstances and conditions are substantially the same on the two connecting lines.

Judge Sweigert: But if they are not physically connected lines, or have not previously established through routes and rates, then there is no bar against any discriminating practice?

Mr. Ginnane: There is no bar. And there is some history to this, a rather bitter history for the Interstate Commerce Commission.

[fol. 942] Let me take as a starting point the proposition that not everything a railroad does is subject to federal regulation at the suit of a competitor. Specifically, in the analogous area of—in the same area of routes and rates the whole legislative and judicial history of the route and rate provision of Section 15(3) and 15(4) reflects a purpose to allow railroads considerable competitive freedom in dealing with their competitors. Repeatedly Congress and the Supreme Court in carrying out the congressional purpose have restricted ICC's power to require railroads to enter into through routes and joint rates with each other. The Commission, to use a colloquial phrase, has been slapped down again and again in its ideas as to whether and under what conditions through routes and joint rates might be in the general public welfare.

I would suppose as of 25 years ago, before the Commission had these legislative and judicial reverses, it might well have been most sympathetic to Western Pacific's request for the same rate treatment as the Southern Pacific gets over the Portland routes. But that is the real history of this thing. Every time the Commission has taken a broad, philosophical approach to the establishment of through routes and joint rates, its wings have been cut.

[fol. 943] Judge Sweigert: Would that policy still apply where the very purpose of the establishment of this Bieber connection was to provide some competition against the Southern Pacific in this area of traffic? That was the purpose of the original construction of the connection, wasn't it?

Mr. Ginnane: I am sure that is what the constructors had in mind and what the Commission had in mind in approving the route, but there was not the slightest implication in the original construction in '31 that that meant that without regard to the specific provisions of the Act that route composed of the Great Northern and Western Pacific would

have to have exactly the same rate treatment which exists over the Portland route of the Southern Pacific Company.

Judge Sweigert: Then that means that the refusal of the Northern Pacific and Union Pacific to give the same consideration to Western Pacific as they did to Southern Pacific would frustrate the purpose of this thing, wouldn't it? How can the routes compete if these carriers up north can make arrangements with Southern Pacific—(inaudible to the reporter).

Mr. Ginnane: They compete as to points served by Great Northern where joint rates apply on the same level as via Southern Pacific from Portland. The routes are [fol. 944] competitive as to many points served by Great Northern. It can't compete as to points served only by Union Pacific or Northern Pacific.

Now, the only relevant statutory provision—and we are all agreed on this—is Section 3(4) which prohibits railroads from discriminating in their rates, fares and charges between connecting lines.

Judge Merrill: As I understand it, then, the Commission concedes that if we have a situation in which a connecting line is involved, and if we have a situation in which rationally we can't say that there is a lack of similarity in circumstances, that a through route and joint rates can be secured—must be imposed in the absence of voluntary agreement to it, irrespective of the public need.

Mr. Ginnane: That is correct. All the parties are agreed that Western Pacific has the burden of establishing two things, and only two things—

Judge Zirpoli: May I ask a question? To what degree does similarity of circumstances and conditions indicate whether or not there is competition? Isn't that a factor that determines whether or not there is competition, and a very important factor?

Mr. Ginnane: I am not sure I understand the question, sir.

[fol. 945] Judge Zirpoli: Well, what determines competition? Wouldn't the similarity in conditions be a factor in determining whether two lines are truly competitive? If

there was such tremendous dissimilarity in circumstances and conditions, they can't be said to be competitive.

Mr. Ginnane: That's right, in a sufficiently extreme situation. On the other hand, there are substantial differences, such as there is. The theory is that it wants some difference in rate treatment.

Judge Zirpoli: If they are truly competitive, shouldn't the degree of similarity which would affect it be one that should be of some true significance and importance?

Mr. Ginnane: We will demonstrate that, Your Honor, this morning.

Judge Zirpoli: Very well.

Judge Sweigert: Pardon me. As I understand it, the Commission has found that there is dissimilarity in conditions here?

Mr. Ginnane: Yes.

Judge Sweigert: Is that right?

Mr. Ginnane: We are all agreed here.

Judge Sweigert: They are not the same?

Mr. Ginnane: They resolved two things against Western Pacific, two things that Western Pacific had to establish. [fol. 946] It held that Western Pacific was not a connecting line with Union Pacific and Northern Pacific; and secondly, it held that even if it was a connecting line the circumstances and conditions surrounding the two routes were not sufficiently comparable.

Judge Sweigert: Then wouldn't that be inconsistent with the very purpose of the inauguration of this route, which was to establish competition of some kind with the Southern Pacific Company?

Mr. Ginnane: And it has indeed provided competition on all points in the Northwest served by Great Northern.

Judge Sweigert: It wouldn't provide competition unless there was some similarity in conditions of traffic, which is what the Commission has not found?

Mr. Ginnane: Nothing in the Commission's reports authorizing the construction of this line suggests that for one moment the Commission was intending to prescribe complete equality of rate treatment over these two routes.

Judge Merrill: But that wouldn't be within the Commission's prerogative to determine if the lines in fact connected and if the lines were in fact operating under similarity of circumstances. The Commission could not deny equality of rate treatment. It seems to me that that is [fol. 947] sort of bootstrapping yourself a little bit to say that the Commission must have had in mind inequality of rate treatment at the time that it established the Bieber Route, or that there is a lack of similarity of circumstances.

Mr. Ginnane: The Commission could only have intended that whatever rate structure was finally established for the Bieber Route would be in accordance with the general provisions of the Act governing rate structures generally. And this problem of open and closed routes is not peculiar to this particular geographic problem. It goes on all over the United States.

Judge Merrill: I think what my brothers up here are troubled by is that the Commission in determining a lack of similarity of circumstances seems to have dealt overwhelmingly with the situation south of Portland rather than the situation north of Portland to which the Western Pacific would like to get access, and that as far as the situation south of Portland is concerned, the route was created for the purpose of competing with the Southern Pacific. It seems to be doing so vigorously, and how can it consistently be said under these circumstances that dissimilarity of circumstances south of Portland is a valid consideration in denying access to the Northwest? They are competing vigorously?

[fol. 948] Mr. Ginnane: They are competing.

Judge Merrill: They are created for the purpose of doing so. Now they are denied the opportunity of competing to the north because the circumstances somehow are dissimilar, even though any such dissimilarity is being overcome in a very competitive fashion.

Mr. Ginnane: To the points served by the Great Northern. The problems of connection and interchange are different at Portland. On the division of argument which we had undertaken—

Judge Zirpoli: How are the conditions different at Portland?

Mr. Ginnane: Could I leave that for counsel for the Northern Pacific, because in our division of argument in which we sought to minimize duplication, I undertook to concentrate primarily on the Commission's findings that Western Pacific is not a connecting line.

Judge Merrill: I am afraid we are interrupting your flow of argument. Go ahead, counsel.

Mr. Ginnane: I am just concerned that counsel not engage in duplication or repetition.

The Commission held, we think correctly, that connecting lines are those carriers having direct physical connection or making up a through route.

Judge Merrill: Now, on that I hope you will be able [fol. 949] to enlighten me. There seems to me to be a little contradiction in terms, to say that in order to be a connecting carrier the through route must not only connect but must go through, must go beyond the connection. It is my understanding that on the Bieber Route we do have a through route as far as Portland. Am I correct in that? We do have joint rate arrangements between Great Northern—

Mr. Ginnane: (Interposing.) With the Great Northern.

Judge Merrill: So that as far as Portland we do have a through route?

Mr. Ginnane: And beyond Portland to all points served by Great Northern.

Judge Merrill: Yes. Well, then why is it necessary in order to be a connecting line at Portland that the connecting line be able to show that it has through routes beyond and through Portland over the very carriers about whose discrimination it is complaining?

Mr. Ginnane: Well, for example, Great Northern might have agreed to participate in through routes with Western Pacific only as far as Portland and for some arbitrary reason might have said, "We won't establish through routes at any other point." Through routes primarily are established by agreement of the carriers.

[fol. 950] Judge Merrill: But I don't see how that ties into our concept of a connecting carrier. It seems to me that by insisting on the existence of through routes beyond and over the carriers that are being complained of, you are departing from what I would consider to be the ordinary conduct of a connecting carrier.

Mr. Ginnane: If Union Pacific, for example, had a physical connection with—if Western Pacific, rather, had a physical connection—

Judge Zirpoli: Why is this so important? Traffic moves. The pattern of traffic is there. Why is a physical connection so important?

Mr. Ginnane: Because it is in the alternative, the Commission held. To be a connecting line one of two facts must exist, a direct physical connection—which is a typical concept of a connecting line. Or even in the absence of a physical connection, as here, a carrier is entitled to be treated as a connecting carrier, connecting line, if it participates in through-route movements with other carriers. It's one or the other. It doesn't have to be both.

Judge Merrill: Where do we find any requirement that this through route must be any more than a through route that brings the carrier to the point of connection?

Mr. Ginnane: As a matter of fact, just looking at 3(4) [fol. 951] alone as original matter, I think one's natural ruling would be that it requires a physical connection, and the Commission has sort of expanded that with judicial approval through the years to say that, "Well, if you don't have a direct through route, you can still be a connecting line if you are a participant in through movement."

Judge Merrill: It seems to me that is just exactly what we have here. We have a connection by Western Pacific, who you might say is an agent of the Great Northern. Now, the Great Northern—if the Great Northern were attacking the rate here instead of the Western Pacific, if it were representing the Bieber partners, we wouldn't have any problem of connecting line at all. Why, then, should the situation be any different?

Mr. Ginnane: But they are not. Admittedly there is no physical connection between Western Pacific and these two lines. So what do we get? The basic contention of Western

Pacific that this route is operated as a single unit, as an entity, and that a route as an entity is entitled to protection under 3(4).

Judge Zirpoli: Isn't it accomplishing all the objectives that would be accomplished by a single line? It seems to me everything is being accomplished. The purpose of transportation is being served, and it seems to be in iden-
[fol. 952] tical fashion.

Mr. Ginnane: That is true in the Rio Grande, the Union Pacific dispute which went to the Supreme Court. Ample physical connection, and every purpose could have been served as far as physical transportation goes. The Supreme Court recognized Union Pacific's long-established policy of holding the traffic in the Northwest for itself and not allowing it to be routed via Rio Grande except for prohibitive higher combination rates.

Now, it isn't—that route isn't operated as a unit. It isn't operated as an entity in any sense recognized in transportation routes. Western Pacific and Great Northern are separate carriers. Each of them determines rates separately. No one of them can put in a rate alone. Each can act in establishing a through rate only with the concurrence of the other. Which is a situation which every independent railroad in the United States finds itself in. There are thousands of these through routes, but they are not regarded as entities for rate purposes. Each carrier is an independent participant whose concurrence is required before any through transportation and through rate can be established.

Judge Sweigert: Well, how about this? The discrimination provision, if we have the Western Pacific and Great
[fol. 953] Northern having a through rate arrangement up at Portland—and I understand that to be the fact, isn't it?

Mr. Ginnane: Union Pacific and—

Judge Sweigert: Western Pacific and Great Northern.

Mr. Ginnane: Yes. And beyond Portland to other points served by Great Northern.

Judge Sweigert: All right, at least to Portland. Now, having established a through rate arrangement, couldn't the Great Northern-Western Pacific arrangement be considered to connect at Portland or beyond with Union Pacific and Northern Pacific for the purposes of—at least of ascertaining whether or not any discriminatory practices were being followed by Northern Pacific and Union Pacific.

Mr. Ginnane: We submit no, sir, Your Honor. We admit that Western Pacific is a connecting line with either Northern Pacific or Union Pacific at Portland because it has a physical connection. No question about it. But Western Pacific does not have a physical connection, admittedly, and it does not participate in through routes with Union Pacific and Great Northern.

Judge Merrill: In other words, unless there is a physical connection, the Union Pacific must more or less hold out [fol. 954] its hand by virtue of granting a through route or Western Pacific cannot be said to connect with Union Pacific. There must be a holding out by Union Pacific in order to accomplish a connection.

Mr. Ginnane: Yes.

Judge Merrill: In the absence of a physical connection.

Mr. Ginnane: In the absence of a physical connection, yes. And that is exactly what is involved in the establishment of through routes, a holding out of the hand.

Judge Sweigert: Pardon me, is it correct to say that if Great Northern were complaining of discrimination by Northern Pacific and Union Pacific under that section, that they would have a right to be heard?

Mr. Ginnane: That's right. They are a connecting line by reason of direct physical connection.

Judge Sweigert: Well, what is the position of Great Northern?

Mr. Ginnane: They filed a pleading stating that they had no objection to the relief sought being given.

Judge Sweigert: But they are not asking for it?

Mr. Ginnane: They are not asking for it, they are not participants in the litigation. Santa Fe took the same position.

[fol. 955] Judge Zirpoli: Is it your contention that the Atlantic Coastline case and the—(inaudible)—case laid down a flat rule that in the absence of physical connection there must be a through route?

Mr. Ginnane: Yes.

Judge Zirpoli: Your contention is that that flat rule was laid down by those cases?

Mr. Ginnane: That is the way the Commissioner has consistently interpreted it. It has to be one of two things: direct physical connection, which is, of course, the typical connection, or participation in a through route.

Judge Sweigert: Well, if the Commissioner has extended it by interpretation to include through route arrangements as equivalent of physical connection, isn't it possible for them to extend it a little bit more by interpretation to mean a situation like this?

Mr. Ginnane: Well, there are limits to what it can do by way of interpretation, as it has been assured by the courts time and time again in exactly this type of situation.

Now, what is a through route? The Supreme Court said in the Rio Grande case:

> "The test of existence of a through route is for the participating carriers to hold themselves out as [fol. 956] offering through transportation service. Findings of through route can therefore be made on the basis of express agreements between carriers, or on the basis of inferences drawn from continuous practices sufficient to show that through route exists even though not provided for in formal contracts or tariffs."

Judge Zirpoli: Specifically, why was this through route provision granted to certain specific commodities? Why did that come about? How did it come about?

Mr. Ginnane: In this case?

Judge Zirpoli: Yes.

Mr. Ginnane: Joint rates exist over the Bieber Route at the point served by Union Pacific and Northern Pacific on cast iron pipe.

Judge Zirpoli: Yes.

Mr. Ginnane: They also exist on automobiles, but the automobile movement is non-existent because the projected plant was never built.

Judge Zirpoli: How did it come about on the iron pipe? How did that come about?

Mr. Ginnane: Because the shipper asked the carrier for such rates and made a showing of need for the rate. We had the same thing in the—

[fol. 957] Judge Zirpoli: (Interposing.) Well, what I am driving at is, were all of these exemptions voluntary acts or were they the consequence of complaints filed or some other action of that character?

Mr. Ginnane: Joint rates on cast iron pipe were voluntarily granted. Joint rates on livestock were granted by the Commission, but no livestock moved. The joint rates on automobiles was voluntarily granted but, as I say, that became hypothetical because the plant was never built.

Judge Zirpoli: When they were granted by the Commission on livestock, was that with opposition?

Mr. Ginnane: That was with opposition.

Judge Zirpoli: Well, what is the logic supporting granting it with opposition for livestock and doesn't support granting it to the others—to any other commodity?

Mr. Ginnane: Because the Commissioner was able to make the finding required by Section 15 for the imposition of through routes.

Judge Zirpoli: So that was a different approach from the 3(4) approach?

Mr. Ginnane: And the law was settled in the Rio Grande case by the Supreme Court where a carrier, for one reason or another, participates in joint rates on one or two [fol. 958] commodities, but that does not amount and need not be held as constituting a holding out to perform through transportation service on all commodities.

Again, on the record here there is a showing that 30 carloads of miscellaneous freight moved at the higher combination rates over the Bieber Route at two points served by Northern Pacific, but they were probably shipper mistakes in routing them where the higher rates would apply.

But more important, the Supreme Court also held in the Rio Grande case, and also held on the same sort of facts in the Milwaukee case, that a mere trickle of shipments is not enough to establish the existence of through transportation.

Judge Sweigert: Well, it included livestock and cast iron pipe. Would that be a small percentage or a trickle as compared to the entire traffic?

Mr. Ginnane: No livestock actually moves. About 200 carloads of pipe move a year, and about 20 or 25 miscellaneous carloads, government and commercial traffic. A mere drop in the bucket compared to the commercial traffic available. And that was exactly the situation that was before the Supreme Court both in the Rio Grande and the Milwaukee cases. The shipment actually moving in through transportation service was so small as to be regarded as [fol. 959] not representative—not a representative holding out to perform through transportation service. And we submit it is exactly the same factual situation here.

Basically, I think the whole case now boils down to the contention, is a route with perhaps two or three carriers embraced in it—is that route entitled to the protection of a connecting line under 3(4)? 3(4) doesn't use the word "route." It talks about connecting carriers.

And look at the consequences here. Here the carrier, Great Northern, that does connect at Portland. Now you are going to ask to hold that the next carrier, Western Pacific, that it can assert that it is a connecting line. And then where do you stop? The next carrier is the Santa Fe.

Now, you apply that around the United States generally, we would get expansion of the concept of connecting lines such as no one has ever contemplated. Indeed, this is the first case in which such a concept of connecting line has even been urged.

And I think it is significant that we are now told by Western Pacific that it was the route competing with Southern Pacific that was to be protected from the outset. It has taken them about 25 years to discover this route [fol. 960] entity concept as included in the protection of connecting lines under Section 3(4).

Thank you.

ARGUMENT BY MR. HIGGINS ON BEHALF OF THE UNION PACIFIC, INTERVENING DEFENDANT

Mr. Higgins: May it please the Court, my name is William Higgins. I am appearing for the Union Pacific, the intervening defendant in this proceeding.

I am going to discuss the test of similarity of circumstances and conditions, and a good deal of what I have to say will be equally applicable to Union Pacific and the Northern Pacific as well.

The plaintiff, Western Pacific, concedes there must be similarity of circumstances and conditions between the contrasting roads before there may be a finding of discrimination under Section 3(4). They dispute the principle resorted to and relied upon by the Commission and also dispute the application of the facts to that principle. I will endeavor to show that the principle relied upon by the Commission is based in logic and supported by precedent, and the findings are amply supported by the evidence of record.

Section 3 of the Act, which relates to discrimination between rates, in the context of this case means that Western Pacific is alleging that the Union Pacific and Northern Pacific are discriminating in that they participate in joint rates between the Northwestern states and California in [fol. 961] connection with the Southern Pacific at Portland, while not so participating in the same rates at the same level with the Great Northern at Portland for movement over the Bieber Route.

Now, within the circumstances of this case, that means that a multitude of rates in the Northwestern area and California in the reverse direction, applicable on numerous commodities, are involved. It is incumbent upon the Commission, then, to compare circumstances and conditions over the allegedly preferred and allegedly prejudiced route. The present run on the Northern Pacific and the Union Pacific in the Northwest run from the various points here to Portland and then south to California destinations and origins. The allegedly prejudiced route, the route that the plaintiff Western Pacific would like to see opened, and the route on which they contend joint rates equivalent to the Southern Pacific rates should be in effect, would be from the same Northern Pacific-Union Pacific points to

Portland, then over the Bieber run, through Bend, Bieber, to California points.

The Commission accordingly, because over-all single component rates are involved, which involves the carriers in the over-all transportation, the Commission must then compare the over-all circumstances and conditions over the [fol. 962] two allegedly preferred and allegedly prejudiced routes. And that is just what the Commission did in regard to that matter. They did compare one route versus the other. The component north of Portland, the Portland interchange, the No. 1 route over the other, the circumstances and conditions, in fact, of the two routes.

They also compared the over-all circumstances such as comparative distances from the same point in California to the same point in the Northwest, again one route versus the other. They compared also over-all transit lines, one route versus the other.

Now, to avoid any confusion respecting the respective routes, I would like to mention that the route of the Union Pacific from certain parts of the Northwest area, generally east of the Cascades, to a rather limited area in the Los Angeles area, that there are joint rates in effect over that route which are the equivalents as to both points and as to a limited number of commodities as like rates over the Southern Pacific route from Portland.

Judge Zirpoli: When you say "limited," doesn't it apply to all commodities?

Mr. Higgins: No, sir, it does not.

Furthermore, the Western Pacific does not allege that [fol. 963] this route is prejudiced at all. It is not complaining of that route or complaining of the rates for that route, and that is irrelevant to the issues before the Commission.

I think we would take the position that the Union Pacific as to points at which it provided service from this area through this area here (indicating on map) is entitled to compete with the other route, and nobody has objected to that.

There is one other circumstance, one other route that should be mentioned and that is from all points served by the Great Northern in the Northwest, the full line of joint

rates is the same as in effect over the Southern Pacific route, are in effect to destinations of the Western Pacific and the Santa Fe in California as an existing route. Now, when Mr. Treanor refers to performance, and when he says that the Bieber Route is the equal of the Southern Pacific's Portland route, he is talking about that route. He is talking about present movement on the Great Northern over the Bieber Route. The shippers who testified in the case for the Western Pacific were using that route. That meant the shipments from points such as Seattle would go through Vancouver, on down across the Columbia River, down here. From points in this area shipments [fol. 964] would go here—not to Portland but via Great Northern right on down.

Now, that route isn't in issue. That is present. That is being used. It's not an allegedly preferred route, it is not an allegedly prejudiced route. The shippers who testified in this case in no case have ever used the proposed supposedly prejudiced Bieber Route. They have never done it. They have never shipped from a point in this area east of the Cascades to Portland over the Great Northern and then over the—I beg your pardon, they have never shipped from points east of the Cascades via Northern Pacific or the Union Pacific, then to Portland and then back over the Great Northern. All the evidence in this case relating to route comparisons have demonstrated that the Bieber Route, if it were to be participated in by the Northern Pacific and the Union Pacific, would be decidedly inferior from all ordinarily accepted operating characteristics to the present Southern Pacific-Portland-Union Pacific-Northern Pacific route, which is allegedly the preferred route.

Judge Merrill: Would you concede a similarity of circumstances between the Great Northern route to Wishram and south and the Great Northern-Southern Pacific connection at Portland and south?

Mr. Higgins: I don't know, sir. There was no attempt to compare the two. It has no relevance. The Great [fol. 965] Northern did not introduce any evidence as to the characteristics of their route to the north.

Now, I would like to emphasize that the Commission did not consider only the circumstances and conditions south of Portland—the Bieber Route vis-a-vis the Southern

Pacific route up to Portland. They went beyond that and considered the over-all conditions over the two routes.

Now, just as the plaintiff in this case has been hesitant to come to grips with the test of connecting line status, so have they been uncertain as to the actual test of similarity of circumstances and conditions. I think you have to establish a principle first and see if the Commission has applied or misapplied the facts to the principle.

Before the Commission the Western Pacific has contended that the test must be confined to the transportation conditions over the route of the defendants—that is, the conditions north of Portland—and in the opening briefs of this court it stated that the only lawful test is whether there are more costly or more difficult transportation conditions imposed upon those allegedly discriminating, that is, Union Pacific and Northern Pacific north of Portland.

Now, in the complaint to this Court the Western Pacific [fol. 966] said that the error of the Commission was that in applying the test of physical operating conditions it limited itself to the route south of Portland. But the Commission did not do that.

In their reply brief there seems to be a certain change in the test that the Western Pacific feels is applicable in that they said that the Commission should review the evidence as it applies to the routes as a whole, in their entirety, and not fragmented north and south, which we contend the Commissioners do.

Now Western Pacific asserts that the error of the Commission was in requiring that the inherent physical characteristics of the two routes must be identical. I submit that the Commission's report contains no such language and no such finding. The Commission in its report said that, "Equality of treatment is determined by similarity of circumstances and conditions."

They referred then to the Routing, Coal case, 313 I.C.C. 752. In that case there was a comparison of over-all circumstances and conditions over the entire routes. In the district court proceeding, 205 Fed Supp 360, the contention was made that the Commission should have looked only at the portion of the transportation provided by the

allegedly discriminated carrier. In this case that would [fol. 967] be only the service performed by Northern Pacific and Union Pacific north of Portland.

The Court and the Commission both rejected that argument and said there must be an evaluation of over-all circumstances and conditions to determine if there is sufficient similarity to require equal rate treatment. That was affirmed by the Supreme Court, 371 U.S. 6.

Now, the Commission, after asserting the principle of the Routing Coal case, went on to make this finding:

> "The route sought through Bieber and Portland is longer and involves more difficult operating conditions that the Southern Pacific route, and they require hauls in a general direction opposite to the direct movement."

Now, that implies an evaluation of more than just the route south of Portland because the haul in the opposite direction is north of the Columbia River, back and forth.

Judge Zirpoli: When you consider the similarity and dissimilarity, do you consider them as they relate to the effect on transportation or do you consider them because of physical differences? Isn't it the ultimate effect on transportation which determines whether it is similar or dissimilar?

Mr. Higgins: I would say it is a dual test, a test of [fol. 968] operating characteristics and also the test of the effect upon the allegedly discriminating carrier.

Judge Zirpoli: Would the time consumed in shipping be a major consideration?

Mr. Higgins: It would be a very, very significant factor. It might explain the reason why carriers such as Union Pacific or Northern Pacific decline to participate in joint rates on this route. I don't know.

Judge Zirpoli: When you look at it from the shipper's point of view in which time might not be an important factor, where you look at the shipper's point of view where the only important factor to him may be cost—or do you just look at it from the point of view of the railroads?

Mr. Higgins: We look at it from the point of view of the railroad and the shipper. The railroads are not in a position of encouraging circuitous, round-about, slow and costly routes if that is not going to provide a good service to the shipping public. This is a competitive situation between the Northwest and California, not only between railroads but between other forms of transportation as well, and if a railroad in one case were to offer service over a route that just does not make sense from an operating or competitive standpoint, that railroad will be hurt the next [fol. 969] time it solicits a shipper against a truck operation. That is one of the reasons why Union Pacific has declined to participate in what it considers to be an inefficient, slow and circuitous route.

Judge Merrill: Well, this is what troubles me about this: We are talking about similarity of circumstances which might be relevant in a consideration of a granting of a through route through public necessity or anything of that sort. The similarity of circumstances that we are concerned with here would be those that would disqualify someone from claiming to have been discriminated against, and in this case by virtue of the rates charged.

Now, what possible relevancy is there to the round-about route south of Portland that would justify discrimination as to rates charged north of Portland?

Mr. Higgins: Your Honor, there is no rate charged north of Portland. If we had segmented rates, rates which broke on Portland, one north and one south, perhaps there would be a relevance in examining only the portion relating to that rate either north or south, but these are over-all single factors, one component rate.

Judge Zirpoli: Would a division of rates then be of some significance for that purpose?

Mr. Higgins: Not to this extent, sir, no. That question was reserved later. The charges that accrue under the rate, [fol. 970] of course, are divided between the carriers upon a basis which was in the formula which in a number of circumstances included circuity and number of miles of routes, and so forth.

But I would like to point out briefly that the test of similarity of circumstances and conditions was, as used by the Commission in this case, adopted previously. The Supreme Court has affirmed the use of that principle and that test. The Western Pacific contends that the facts are different. Of course they are. Elements present in one instance are not present in the other. I think it is fair to say that in this case there were more and different dissimilar circumstances than there were that the Commission considered in the Routing Coal case.

Judge Zirpoli: Well, there is some dissimilarity in every competing line, isn't there, in every competing line situation?

Mr. Higgins: Yes, sir, there would be. No two routes are identical. The Commission did not observe that test. They did not require identical physical characteristics.

Judge Zirpoli: What I am trying to get at, what is the ultimate basic objective which determines whether or not similarity of circumstances exists or does not exist? Is it [fol. 971] the ultimate transportation benefits that a shipper gets between Sacramento and Seattle, or what is it?

Mr. Higgins: It rests in the ultimate discretion of the Commission as to whether the conditions and circumstances are so dissimilar that the carrier that is allegedly discriminating has a good reason for doing it.

I would like to point out, first of all, that this is a complaint case. The Western Pacific came in this case attempting to upset and attacking a long-established rate structure. They had the burden of proving similarity. They admit that that is the test and they had the burden of proving it. However, there was no evidence introduced by the Western Pacific that compared one route versus the other. In fact, the Western Pacific witness who testified on the operating circumstances acknowledged that there was circuity and back-hauls and less favorable interchange at Portland.

The only over-all evidence introduced by the Western Pacific was the miles between northwest points and California points, and in every case the mileage was considerably longer over the supposedly prejudiced route than it is over the present Southern Pacific route.

I would like to point out, if I may, to the Court why the Union Pacific considered the circumstances so different

[fol. 972] that it is justified in declining to participate in joint rates with the Bieber Route and the Great Northern. For more than 50 years the Union Pacific had participated with rates and routes with the Southern Pacific from points such as Spokane to the east and Seattle to the west. There was a direct movement from Portland by the Union Pacific, and at that point there was a short interchange at Portland, four and one-half miles to the Southern Pacific. Shipments were then moved over the Southern Pacific route to and from points in California. The Southern Pacific did not compete in the Northwest with the Union Pacific, and whenever a shipment was originated by the Union Pacific at one of these points and delivered to the Southern Pacific, that is as far as it would go. It received the full haul.

On the other hand, if joint rates were put into effect at Union Pacific points in the Northwest to Portland over the Bieber route, this would be the result: A typical shipment would move over the same trackage to a point in Portland as it did in the first instance. But at Portland, instead of being interchanged for the short four-and-one-half mile distance, it would have to be interchanged to the Great Northern at Vancouver, Washington, across the Willamette River, across the Columbia River, some twelve and one-half [fol. 973] miles. At that point the Great Northern would move the shipment back east along the north bank of the Columbia River. The Union Pacific shipment moves this way, west on the south bank, and then south to the California destination.

Now, it is apparent, first of all, in every case from points east of the Cascades there is, in fact, a reverse movement. The result of this, and the evidence also indicated numerous other characteristics where the supposedly prejudiced —(unintelligible)—the result is there's a slower time and a longer distance between comparable points. For example, from Los Angeles to Seattle the mileage over the present Southern Pacific route is 1,275 miles to the Union Pacific points in Seattle. If the Bieber Route were used, the mileage over the Bieber Route to Portland and then Union Pacific would be 1,493 miles. The scheduled transit time over the present Southern Pacific route is 44 hours. If

the same service were provided over the Bieber route, the scheduled transit time would be 70 hours.

Another circumstance, the Great Northern competes with the Union Pacific at all points in the Northwest. And the Union Pacific also has a trackage which goes along the Columbia River at this point, and then south to Bend, Oregon. Every shipment received and originated by the Union Pacific at one of these points is delivered to the [fol. 974] Northern—that is, the Great Northern points, would be moved along a track parallel to the Union Pacific, and for a distance of 246 miles, which is the distance of the Union Pacific, that they themselves could serve.

Judge Zirpoli: Why is it the only interchange is at Portland? Why is there an interchange there?

Mr. Higgins: Because that is the place where the complainant, Western Pacific, alleges discrimination results. We have had no request from Great Northern, or, apparently, to participate in rates at Bend or Wishram. Perhaps they don't want it. They haven't appeared and haven't complained, Your Honor.

I submit, then, that the circumstances and conditions are so dissimilar over the two routes—and the Commission found this and decided to fix rates, comparing one route as against the other, reached the final conclusion that the Western Pacific did not prove the similarity required, and beyond that found a dissimilarity in all respects—operational, competitive—and the final result was they found that they are so strongly dissimilar that the different rate structure was justified, one route versus the other.

Thank you.

Argument by Mr. Farrell on Behalf of Northern Pacific, et al.

Mr. Farrell: May it please the Court, my name is Frank [fol. 975] Farrell. I represent the Northern Pacific, the Camas Prairie and Walla Walla Railroads.

I understand the Court is concerned about competition. Well, they should be. At the time the Interstate Commerce Commission authorized the construction of the Western Pacific North Bieber to meet the needs of the Great Northern, and for the Great Northern construction to their junction 490 miles from the point of interchange, which

the plaintiff Western Pacific seeks in this proceeding, the parties represented to the Commission—and that went on into the field of the federal court and ultimately was heard—if this construction was authorized, they would establish joint through routes and rates between points in the states of Oregon, Washington and Idaho to points in California. They fulfilled that obligation, and they have worked as a team in the movement of freight between these points.

My company, the Northern Pacific, also maintains rates, but the rates we maintain are local rates from Portland to points within the state, with certain exceptions which the Court has referred to, namely, on livestock, on pipe, on automobiles, and what are called class rates which are not here involved.

The circumstances of those, in 1951, the United States Pipe Company, which established a plant at Tecopa, [fol. 976] California, that if it had shipments going to points on the Northern Pacific in these northern states, it would therefore like joint through rates. A complaint was filed with the Interstate Commerce Commission. Before the matter came on for hearing we had agreed to and we did publish those joint through rates. Cars have continued to move on those rates, and still do.

In 1959 an automobile manufacturer said it was going to establish an automobile assembly plant in Northern California. Again a complaint was filed. We did establish those rates. The plant was not built and no movement has ever occurred on it.

But here there is no question: Through routes, which is what the Western Pacific seeks in this proceeding, do not exist. The Western Pacific has conceded it before the Commission, and they concede it in the brief before this Court at page 8, and they said that under the rule of the Thompson case, 343 U.S., through routes do not presently exist. That is their objective. That is what they seek. That's what they want.

So there is no dispute about it. We cite that case at some length. In that case the Commission held not that through routes do exist. The Supreme Court in overturning it said that if you take the construction which the Commission [fol. 977] had taken in that proceeding and hold, well,

the subject is a rate for one point, and there is another rate beyond another point, that through routes exist, then through routes will exist between all points in the United States. I think it is a very important case in this proceeding, if the Court please.

So, then, if they could have proceeded under 1(4) and under 15(3) and 15(4), as this Court well knows—and they did start to proceed on that basis—if the public interest required it, the Commission could have required through routes. Not the circuitous routes which would be here involved, but they could have required, for example, that other roads participate, so that here when you get up to here, for example, you get on the S.P. and S. lines, and the S.P. & S. Railroad could have been included in those routes and in those rates and could have actually participated in the revenue. Here the S.P.&S. is not named as a defendant in this proceeding. The S.P.& S. could then have taken the traffic going to Eastern Washington, east of the Cascades. The S.P.& S. could have then moved that traffic directly to points east, from which it then could have been interchanged at Pasco or Spokane to the Northern Pacific and moved on to destinations further east.

Now, that is what they could do under Paragraph 1(4) of the Act. And the same going west here (indicating on [fol. 978] map), and you would have had very efficient routes.

But the Commission found that the public interest did not require it. The plaintiff agrees with the Commission and says the public interest does not require it. But it says that these defendants have violated Paragraph 4 of Section 3 of the Act.

Well, Paragraph 4 of Section 3 of the Act came into the Act at the very inception and is not changed in the 77 years that have elapsed. At that time carriers were under no injunction to establish through routes or through rates. They had a completely free hand, subject only to 3(4). And 3(4) provides that you cannot discriminate in facilities. But how can you extend facilities to a point that is a thousand or two thousand miles away?

Congress was talking about the common law duty that carriers that met together in the same town, they had to treat each other alike. They couldn't just go ahead and

establish routes with one carrier and refuse to establish them with another.

They also provided that you could not discriminate in your rates.

That provision remained unchanged, and finally in 1906 they said, "Well, there are some through routes in the [fol. 979] United States, but there are not enough." Now, a through route is a simple thing. A through route is simply a holding out of the roads together to move freight over that route. So in 1906 in the Hepburn Act Congress gave the Commission powers for the first time to prescribe through routes. Then the Supreme Court held in 1907 that, well, if there was one through route, that the Commission could not require that a second route be prescribed so there could not be competition.

Congress said this was bad. So in 1910 they again extended it and gave the Commission powers to prescribe through routes, subject to the short haul limitation that a carrier was entitled to have its long haul protected.

Then there are two exceptions to that in the Act today. If efficient and economical transportation is required and will not result in a—(word unintelligible)—or in circuity, they can short-haul it. And of course there is a short haul involved here because my road, the Northern Pacific, owns a half interest in the S.P.& S. Railroad. We are under common management and control. And the S.P.& S. comes down to Bend. So does the Union Pacific. So, of course, if what is sought here is accomplished, we will be short-hauled some 246 miles up to Bend.

[fol. 980] The plaintiff says, "Well, that isn't involved because I don't seek through routes direct. All I seek to do is end the discrimination at this junction 490 miles from my railroad, so it should not be considered."

The findings with respect to the short haul related simply and solely to their finding that through routes and rates were not required under 1(4), 15(3) and 15(4) of the Act.

Now, I think it is interesting they have gone ahead and completely abandoned that. They say, "Well, now, there is discrimination."

I think it should also be mentioned, too, despite all their work on this case, they have come up with one case, 270 U.S., with which the Court is familiar. And as the Court well knows, Michigan City, Indiana, all that was involved was switching. Five carriers. One carrier says he has switching arrangements with Carrier No. 2, "We do not have switching arrangements with other freight carriers. We think we have been discriminated against." The Commission so held. On appeal the plaintiff said to the Supreme Court—what they said was, "Well, we do not have a direct physical connection." There was actually a distance of a little over 1.38, a little over three miles—"and therefore there is a difference in circumstances and conditions."

[fol. 981] They did not say, "We are not a connecting line within the meaning of the Act," they said, "There is a difference in circumstances and conditions, such that we should not be required."

The Court held discrimination could, of course, be removed, and held that despite the fact that there was a difference, true, the Commission had found there to be sufficient similarity that they could not substitute their judgment for that of the Commission.

I submit it's clearly distinguishable and in no way in point in this proceeding.

So I might say further, too—and I guess I am out of time, unfortunately—but we have—I just want to clear this one point up—the Northern Pacific has for more than 50 years participated via Portland with the Southern Pacific in joint through rates. It has not done so with Western Pacific because of the tremendous back haul. For example, let's take just one illustration. Let's take a shipment going to Portland. If the joint through rates that the plaintiff seeks were established, that shipment comes up the Bieber on the Western Pacific, at Bieber it goes to the Great Northern, the Great Northern takes it up to Wishram, 106 miles west of Vancouver, the Northern Pacific gets it at that point and takes it up around Auburn, and [fol. 982] then over to Spokane. That bill of lading that goes along with that shipment shows the route. The Great Northern knows where that shipment is going. If the shipment is routed Great Northern, it goes directly north to Wishram and back east to Spokane.

Plaintiff says, "Well, I don't seek through rates. All I seek to do is eliminate discrimination. I don't care how Northern Pacific handles that shipment north of Portland."

But the short answer to that is Paragraph 8 of Section 15 requires that Northern Pacific follow the routing that the shipper affixes on the bill of lading, and follow it right to the T.

But even assuming their whole argument, assuming that they could do anything with it despite the Act, despite what the rulings provide, nevertheless you would still have 106 miles west and 106 miles east. All of that could have been eliminated if plaintiff had gone ahead and proceeded under 1(4) and 15(3) and 15(4) of the Act in asking the Commission to prescribe joint through routes and rates, which it has not done, and which it has completely abandoned.

So I submit, Your Honors, that if connecting line is construed as this plaintiff would seek to have it construed, there would be no need for Congress to confer its power [fol. 983] on the Commission to prescribe through routes and rates and expanding that power in 1910. It is wholly without precedence, wholly without authority.

I am sorry, I think my time has elapsed. I thank the Court.

Judge Merrill: Do you have some rebuttal argument to present, Mr. Treanor?

Rebuttal Argument by Mr. Treanor

Mr. Treanor: Yes, Your Honor.

Your Honors, first I would like to observe that in the rather dramatic pointing out of the Commission's efforts to compare transportation characteristics over the preferred and discriminated line, that while there was emphasis to point to the movement along this line over the prejudiced line, there was a studious avoidance of showing the various directions the shipment on S.P. routes take.

There was an avoidance of pointing out that in the Los Angeles area where the Santa Fe is the beneficiary of the routes, the non-discriminatory routes and rates that we seek, that there is as much of a bend coming into Los

Angeles over the Santa Fe as there is in this direction. As a matter of fact, when the Commission compared the alleged length of the two routes, it compared only the single [fol. 984] line shorter portion of the Southern Pacific route, and compared at all times the longer length of the Western Pacific route.

Mr. Farrell—and I don't want to let this get away from me—persists in pointing out that if the Southern Pacific traffic comes to this point, destined to points on the Northern Pacific east of the Cascades, it moves over their subsidiary, S.P.& S., and he says they would have to move our traffic up to Auburn and over and not use their subsidiary because their subsidiary is not a defendant in this case.

We say that if the order to cease and desist from discrimination is entered, the Northern Pacific will soon voluntarily find that they will publish the same rates over their subsidiary.

But I would like to point something else out to the Court. Mr. Farrell says that the law requires them to follow the shipper's routing, and if the Northern Pacific is in there and not the S.P.& S., they must move it via Auburn. If that is the case, their chief witness at the hearing testified that he is violating the law, because he testified that as a matter of operating convenience, regardless of the routing shown in the bill of lading, to a Northern Pacific point east of the Cascades, the traffic is moved over their shorter subsidiary route.

[fol. 985] Now, the Commission has made, and we think correctly, a point of emphasizing to us that the S.P.& S. must, for rate-making purposes, be considered a part of the Northern Pacific-Great Northern system, and I don't know how they can eliminate rate discrimination themselves and not eliminate it over their subsidiary.

The Commission, I believe, Your Honors,—Mr. Ginnane stated right at the outset this is a question of: How is the Western Pacific being hurt and the public interest is really not too involved here? We think it is. We have the same conviction that the public interest is involved, and we submit to Your Honors that the overwhelming testimony, the

only testimony, as a matter of fact, regarding the public interest was put in by Western Pacific. And we suggest that any discrimination, an act of discrimination—

Judge Zirpoli: Does this become germane since you abandoned 1(4)?

Mr. Treanor: Yes, sir, to this extent—only to this extent: The shipping interest is always in competition. I don't think you can disregard the shipper interests with regard to the competition. As a matter of fact, Your Honor, when the Bieber Route was born by the Commission, the whole emphasis was on "At last we have a route which will compete with the Southern Pacific and give it—" In [fol. 986] fact, almost the words of the Commission was, "The only area that has any competition, that will give any competition to the Southern Pacific, is a small area around Los Angeles served by Union Pacific."

Now, the Commission mentioned the Rio Grande case to you. However, Your Honors, the Rio Grande case was not decided on the question of connecting line status. And Mr. Farrell said to you, and he tipped his hat and said that Western Pacific worked very hard in this case, but they could only come up with one case—the Chicago, Indianapolis & Louisville.

Well, I submit, Your Honors, that all of them in their number have worked very hard, too. And what have they come up with? They come up with Atlantic Coastlines v. The United States, the issue which we have already discussed. There is very little case law on the subject. But I do submit to you that in their attempt to discredit the applicability of Chicago, Indianapolis & Louisville, they have overlooked the very precise language of the Court that there was a complaint made to the Court that causing the discrimination to cease would have the effect of establishing through route and joint rates.

Now, Your Honors, if the absence of joint rates, through routes, and the absence of joint service referred to, con- [fol. 987] sidered by the Court there, is not clearly indicated by that language, I don't know how clearer it can be. Both of the elements that we are complaining about here were present in that case.

Now, mention has been made of the pipe traffic, the cast iron pipe traffic. That traffic, Your Honors, moves and has moved for over ten years in substantial quantities over the very route that will exist if the discrimination ceases. This record contains not one word of testimony which casts an adverse reflection upon the service which that traffic has had over the Bieber Route to its destinations on the Union Pacific and Northern Pacific. The Examiner so found. There is no reason why all classes of traffic cannot move as expeditiously, as economically, and as efficiently as that traffic.

We have been accused of putting in comparisons of service from points east of the Cascades via Wishram. That is not so, Your Honors. Seattle, Washington, is a point served in common by the various defendants. Consolidated Dairy Company, a major shipper located in Seattle on the lines of the Northern Pacific, testified without contradiction that he prefers to use the Bieber Route. If he wants to use the Bieber Route, he must ask the Northern Pacific, on whose line he is located, to come in, pick up his traffic, [fol. 988] and ship it to the Great Northern for movement via the Vancouver-Portland area and then south over the Bieber Route. That witness testified that he finds he has to wait 24 hours at Seattle for that switch from the Northern Pacific. And yet the service is faster. So he has been putting most of his traffic over the Bieber Route from Seattle, and the only difference will prevail, if this discrimination is struck down, will be that he won't have to wait 24 hours to put his traffic in the flow of commerce. He can move it down over the Northern Pacific. And incidentally, the Northern Pacific will benefit because they will get the revenue which now goes to the Great Northern. And I don't see how they can complain about correcting that situation.

It has been emphasized to you that the essence of a through rate or a through route is the holding out. But the essence of discrimination is the holding out to one and the withholding from the other. And this is what we complain about.

We don't think the defendant should be able, that they should be allowed to pick and choose who will be able to participate in this traffic.

The seriousness of the situation I think is most emphasized by the fact that annually 2,500 carloads of traffic which either originate or terminate on the plaintiff's line [fol. 989] must be surrendered to the Southern Pacific only because they are destined or have originated at points served by the Northern Pacific and the Union Pacific.

And when one of the parties says to you, "Well, 30 cars found their way over the Bieber Route to our line by mistake," let me say to Your Honors that it is no mistake which has happened here. The shippers are forced to give up—give their traffic which could move over the Bieber Route.

And much emphasis has been made about the fact that the Southern Pacific through the Bay Area is a single-line road. And yet what do the discriminatory practices do? They take traffic which originates on the Western Pacific Railroad, which belongs on the Western Pacific Railroad, and it must be surrendered to the Southern Pacific. That makes it automatically a two-line haul. And if the two-line haul is so odious that it doesn't justify an end to this discrimination, it certainly doesn't justify it being maintained. And this is something that we think the Commission completely missed in their evaluation of the evidence.

The comment has been made that for 25 years Western Pacific has sat back on this. Well, I don't know why they did before I got there. I don't know whether their previous [fol. 990] counsel failed to see—and I don't mean to take any bouquets for myself, but when this case was presented to me within a year after I joined the carrier from another carrier, I had no difficulty in seeing it.

But in investigating why this had happened in the past, why we waited so long, I got the following answers:

1. In the early years— Picture this little railroad trying to build up to the giant of the Southern Pacific— In the early years it probably wasn't prepared to take on the battle. It probably couldn't show that it could perform as well as the Southern Pacific did.

And then the war came along and the Bieber Route was used to a tremendous capacity, and the road grew strong, and the road grew firm. And it took on new management after the war, aggressive management. And all these people that tell you we put in no testimony about our comparative statistics of our line overlook—and I don't know why—the testimony of Mr. Donald Loftus, Director of Research for our railroad. And Mr. Loftus, in addition to putting in tremendous testimony on the economic growth of the area, testified as to the tremendous improvements that have been made in the physical plant of the Bieber [fol. 991] Route as it applies to the Western Pacific segment thereof.

And so in 1952 when the pipe company asked for the rate, and they were turned down until they went through the formal complaint route, they put the rates in. All right, the Western Pacific was lulled into a false sense of security. "We are going to get them now. They are going to work with us."

Well, nothing happened until 1959 when the automobile plant sought some of our property. And then once again we said, "Please put the rates in." Nothing doing. We filed a complaint. They withdrew from battle and put the rates in immediately before the hearing.

But they didn't tell you this, Your Honor. That plant wasn't just not built. That plant went to our competition which had the routes and the rates that we are seeking here. And that plant is built, but it is served only by Southern Pacific. They couldn't wait for us to correct this situation.

And so finally we decided that it was time to face up to the issue and not be led to the conclusion that we might get them by their grace, by their extending them to us.

Judge Sweigert: Pardon me, Mr. Treanor. Can I ask you one question, and the line of your argument suggests it: You are arguing that various circumstances considered [fol. 992] by the Commission, and so forth, as though it were still an open, factual question. Now, as I understand it, the Commission finally found that there was dissimilarity of circumstances.

Now, would you state what you would suggest be the theory of this Court in upsetting that finding of the Commission, having in mind the limited power that the Court has?

Mr. Treanor: Yes, Your Honor. Two points: First, we believe that the ultimate conclusion does not qualify as a bona fide finding under the Act. To say that the Western Pacific or the Bieber Route is longer and involves more operating condition, that finding, standing by itself, has had no proper foundation laid for it, and therefore, standing by itself, is not a finding on a material issue of fact such as the Commission is required to make under the Administrative Procedure Act.

Now, proceeding beyond that, however, if Your Honor should find that conclusion, or such other conclusions as may be culled out of the record, or the Commission's report, if they qualify as findings, then we ask that you find them to be absolutely arbitrary and capricious and beyond the power of the Commission because they are directly contrary [fol. 993] to the record. For example, if we can assume—

Judge Zirpoli: What is the test to apply to find out whether they are arbitrary or not? What is the test that we are to apply to determine what constitutes a similarity or a dissimilarity?

Mr. Treanor: I would say, Your Honors, that the major test is performance. As Your Honor inquired earlier of some of the previous arguers here, is it the inherent physical layout or is it the effect upon the moving, the hauling of goods?

Judge Zirpoli: Has anyone so defined the test for similarity or dissimilarity?

Mr. Treanor: I thought I had to the Commission, Your Honor.

Judge Zirpoli: I don't mean counsel; I am talking about some court or someone who has had some approval. Has someone defined it before so that it has some acceptance?

Mr. Treanor: Well, Your Honor, I would say this: The very fact that the Commission saw fit to refer to Routings Coal as its authority for its proposition here is an indica-

tion that there is no really clear-cut, definable judicial or administrative authority for the test which is to be applied. I think the test has to be applied on each set of facts as it comes up.

[fol. 994] And as indicated earlier in questions, from the Court, the question of transportation characteristics from Southern California to Portland, that bridge was crossed a long time ago by the Interstate Commerce Commission when it, in full recognition of our somewhat longer length, in full recognition of the operating characteristics that we would have to encounter, still permitted us to establish the route for the purpose of meeting the competition of Southern Pacific.

Now, as to the conditions north of Portland, Mr. Higgins refers to the interchange differences up there, overlooking the fact completely that Northern Pacific interchanges at exactly the same point with the Bieber Route as they interchange with Southern Pacific, overlooking the fact that the Commission— And this is something we do have some authority on—the Commission has repeatedly said that interchange arrangements are an operating matter to be arranged by mutual agreement between the carriers involved. And it has prescribed certain standards.

The receiving carriers, for example, will decide where, within reason, it will receive the cars from its connection. So it is a mutual operation, a mutual obligation there. And the Commission has said, "If you can't agree as an oper-

[fol. 995] ating detail as to how you will interchange, we will do it for you. We have the facilities set up to do that for you. We will litigate that for you."

So, therefore, I say that the facts of this case—and this is why we complained to this Court, Your Honors. We are not here saying that the Commission looked at the evidence, found us wanting, and yet obviously we should have won. Now, in the Routings case which they rely on, it is significant that the facts were not in dispute. The facts of dissimilarity were not in dispute. And the party that was complaining there said, "Don't look at what the evidence is, but only apply the test beyond the point of interest."

We don't say that, Your Honor. We are complaining because the evidence has not been looked at. And I don't think that the Commission by merely saying, "Look, we did refer to the Southern Pacific evidence"—which was a carefully contrived and selected study—"and compared it to your route, and that shows you shouldn't be performing as well as you are."

We say the test should be: What did the 16 shippers testify? Well, they testified, most of them, as to performance.

Judge Merrill: You had better bring your argument to a close, if you will.

[fol. 996] Mr. Treanor: Thank you, Your Honor. The only thing that I would like to close with is the position that, contrary to what the Interstate Commerce Commission has suggested, there is only one thing we see here, Your Honors. That is the opportunity to make our physical route a practical route, under the test suggested by the Southern Pacific, and that is by non-discriminatory rates.

Thank you.

[fol. 997] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. 41779 Civil

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al., Defendants.

Walter G. Treanor, E. L. Van Dellen, R. W. Bridges, San Francisco, California, Attorneys for Plaintiffs The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company.

William H. Orrick, Jr., Assistant Attorney General, Cecil F. Poole, United States Attorney, Charles Elmer Collett, Assistant United States Attorney, Attorneys for Defendant United States of America.

Robert W. Ginnane, General Counsel, Robert S. Burk, Attorney, Interstate Commerce Commission, Washington 25, D. C., Attorneys for Intervenor Interstate Commerce Commission.

Charles W. Burkett, W. Harney Wilson, San Francisco, California, Attorneys for Intervenor Southern Pacific Company.

Vaughan, Paul & Lyons, Varnum Paul, San Francisco 4, California;

Earl F. Requa, Frank S. Farrell, St. Paul, Minnesota, Attorneys for Intervenor Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company.

[fol. 998] F. J. Melia, J. H. Anderson, William P. Higgins, Omaha, Nebraska;

Robert N. Lowry, San Francisco, California,

Attorneys for Intervenor Union Pacific Railroad Company.

No appearance for Intervenor The Atchison, Topeka & Santa Fe Railway Company.

OPINION AND JUDGMENT

ORDER DENYING PETITION—June 19, 1964

Before Merrill, Circuit Judge, and Sweigert and Zirpoli, District Judges.

ZIRPOLI, District Judge

This is an action brought under the Judicial Code, Sections 1336, 1398, 2284 and 2321 through 2325 of Title 28, United States Code, to enjoin, annul and set aside a report and order of the Interstate Commerce Commission. The plaintiffs, Western Pacific Railroad and its subsidiaries,[1] claim that the defendants[2] are engaged in discriminatory

---

[1] The Sacramento Northern Railway and the Tidewater Southern Railway Company.

[2] The defendants named in the complaint filed in the Commission action were: The Atchison, Topeka & Santa Fe Railway Company; The Great Northern Railway Company; The Northern Pacific Railway Company; The Union Pacific Company; The Camas Prairie Railroad Company, jointly owned by Northern Pacific and Union Pacific; The Pacific Coast R.R. Co.; The Spokane International Railroad Company, a subsidiary of the Union Pacific; and the Washington, Idaho and Montana Railway Company. The Northern Pacific and Union Pacific and their subsidiaries denied the allegations of the complaint. The Great Northern, Pacific Coast, Santa Fe and the Washington, Idaho and Montana answered the complaint with expressions of willingness to establish and maintain the routes and rates sought. The Southern Pacific Company intervened in opposition to the complaint.

rate practices at the Portland, Oregon interchange, in violation of Section 3(4) of the Interstate Commerce Act; 49 U.S.C. §3(4). Section 3(4) provides as follows:

> "All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the inter- [fol. 999] change of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

Several issues were ruled on by the Commission which are challenged here;[3] but since we agree with the Commis-

---

[3] The Commission noted that although plaintiffs had "indicated a willingess to rely alone on the alleged violation of Section 3(4)", they had not withdrawn their Section 1(4) [Title 49 U.S.C. Sec. 1(4)] allegations nor their request for "prescription of through routes", a remedy related to a Section 1(4), rather than a Section 3(4) violation (316 I.C.C. at 810). The Commission ruled on both issues. On the Section 3(4) issue, after a lengthy discussion of the law and the facts, the Commission found (316 I.C.C. at 810):

> "There is, therefore, no basis for a finding that the carriers are connecting lines within the meaning of section 3(4)." It then went on to say: "Even if the complainants were connecting carriers, the evidence of record does not establish the similarity of circumstances and conditions which justifies equality of treatment." This last quoted issue this Court need not and does not reach. On the section 1(4) issue, which plaintiffs do not now urge, the Commission found (316 I.C.C. at 811): "On the basis of this record, we cannot find that the public interest would be served by requiring the establishment of joint rates and through routes which are substantially slower and costlier than the present route." The Commission ordered plaintiffs' complaint dismissed because (316 I.C.C. 811):

(footnote continued on next page)

sion's conclusion that plaintiffs are not a "connecting line" within the meaning of Section 3(4) of the Act, we find it unnecessary to resolve the remaining issues presented by the complaint.

The factual background of this case is as follows: The two routes considered herein are called the Bieber route and the Southern Pacific route. The former was created by an order of the Commission in 1931 and was designed to be a competitor with the Southern Pacific route. See *Great Northern Ry. Co. Construction,* 166 I.C.C. 3, 170 [fol. 1000] I.C.C. 399. For purposes of this case, the Bieber route consists of the Santa Fe from points in southern California to Stockton, California, thence Western Pacific to Bieber, California, and thence Great Northern to Portland, Oregon. This line extends along the eastern side of northern California through eastern Oregon to Wishram on the Columbia; from Wishram the line runs to Vancouver, Washington and thence to Portland, Oregon. The Southern Pacific route extends from points in southern California by either Santa Fe or Southern Pacific, through the central part of northern California and central Oregon to Portland. Southern Pacific and defendants have maintained a system of through routes and rates at the Portland interchange for over 50 years. With the exception of a few

---

"We find that the failure and refusal of the defendants to establish through routes and joint rates with the complainants through Bieber and Portland, between points in California, on the one hand, and points in Oregon, Washington, and Idaho, on the other, on the same basis as those published in connection with the Southern Pacific through Portland, is not shown to be unjust or unreasonable, nor to result in discrimination against the complainants in violation of section 3(4) of the act; and that the establishment of through routes and joint rates in connection with the complainants, through Bieber and Portland, is not shown to be necessary or desirable in the public interest."

Other issues raised in the complaint before this Court, and which this Court need neither reach nor resolve, relate to the evidence, testimony rejected and findings of fact that the Commission is alleged to have either failed to make or erroneously found.

commodities, defendants have refused to establish a similar system of through routes and rates with Western Pacific.

A connecting line within the meaning of Section 3(4) is one which has either a direct physical connection at the common interchange or is one which makes up a "through route" through the interchange point. *Atlantic Coast Line R. Co.* v. *United States*, 284 U.S. 288 at 293 (1932). Because Western Pacific terminates at Bieber, California and is therefore the middle link in a three line route, it does [fol. 1001] not have a direct physical connection with the defendant at Portland, Oregon.

The criteria for the determination of whether a through route exists are set forth in *Thompson* v. *United States*, 343 U.S. 549, 557 as follows:

> "Existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. These incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.
>
> "*In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service.* Through carriage implies the existence of a through route whatever the form of the rates charged for the through service." (Emphasis added)

Plaintiff properly concedes that it does not meet the above test[4] because the existence of a few instances of joint rates

---

[4] Plaintiffs' opening brief, page 8, states: "There is little doubt that, under the doctrine of the *Thompson* case, supra, there are not, as yet, a full line of through routes over the Bieber route to or from Northern or Union Pacific points."

and through routes on some commodities is not sufficient to establish a through route generally. *Chicago M. St. P. & P.R. Co.* v. *Spokane P. & S. Ry. Co.*, 300 I.C.C. 453 (1957), aff'd *Chicago M. St. P. & P.R. Co.* v. *United States*, 366 U.S. 745 (1961); *Denver & R.G.W.R. Co.* v. *Union Pac. R. Co.*, 351 U.S. 321 (1956). Therefore, because plaintiff does not meet the test of the *Atlantic Coast Line* case, it is not a "connecting line" within the meaning of section 3(4).

Plaintiff's reliance on *Chicago, I & L. Ry.* v. *United States*, 270 U.S. 287 (1926) is misplaced. This case involved reciprocal switching arrangements and presented no question of whether the carriers in that case were "con-
[fol. 1002] necting lines" for section 3(4) purposes. Moreover, the case was decided prior to the *Atlantic Coast Line* case. Plaintiff's principal argument is that the definition of a "connecting line" is not limited to the definition of *Atlantic Coast Line*. This Court is satisfied that the present definition fully comports with the statutory purpose, and that any further expansion of the term is not warranted. Because the Supreme Court has not rendered any decision on this question since *Atlantic Coast Line*, this Court is bound to follow that decision. Any further liberalization of the present definition will have to come from the Supreme Court.

It Is Therefore Ordered that the petition to enjoin, annul and set aside the order of the Commission is denied, and the complaint is dismissed.

Dated: June 19, 1964.

Charles M. Merrill, Circuit Judge, William T. Sweigert, District Judge, Alfonso J. Zirpoli, District Judge.

[fol. 1003] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 41779

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 17, 1964

I

Notice is hereby given that The Western Pacific Railroad Company; Sacramento Northern Railway; and Tidewater Southern Railway Company, plaintiffs in the above-entitled case, hereby appeal to the Supreme Court of the United States from the final judgment dismissing the complaint against the report and order of the Interstate Commerce Commission and thereby denying the petition to enjoin, annul and set aside such order, which judgment was entered on June 22, 1964.

This appeal is taken pursuant to 28 U.S.C. §§1253 and 2101(b).

II

The clerk will please prepare a transcript of the record in this case for submission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The complaint, including appendices A, B, and C attached thereto, filed September 20, 1963.

2. Answer of intervening defendants Northern Pacific Railway Company, Camas Prairie Railroad Com-
[fol. 1004] pany, and Walla Walla Valley Railway Company, filed on or about November 4, 1963.

3. Answer of intervening defendant Union Pacific Railroad Company filed on or about November 25, 1963.

4. Answer of intervening defendant Southern Pacific Company filed on or about December 16, 1963.

5. Answer of intervening defendant Interstate Commerce Commission filed on or about December 16, 1963.

6. Answer of the United States of America filed on or about December 16, 1963.

7. Answer of intervenor The Atchison, Topeka and Santa Fe Railway Company filed on or about January 13, 1964.

8. Transcript of Oral Argument, June 5, 1964.

9. That portion of the record before the Interstate Commerce Commission comprised of the following items submitted to the Court by plaintiffs:

Certified copies of the following documents in Docket No. 33679—*The Western Pacific Railroad Company*, et al. v. *Camas Prairie*, et al.

(1) Complaint, filed February 10, 1961,

(2) Separate Answer of The Atchison, Topeka and Santa Fe Railway Company, filed March 2, 1961,

(3) Separate Answer of Northern Pacific Railway Company, et al., filed March 10, 1961,

(4) Answer of Union Pacific Railroad Company and Spokane International Railroad Company, filed March 13, 1961,

(5) Answer of Great Northern Railway Company [fol. 1005] and Pacific Coast R. R. Co., filed March 15, 1961,

(6) Answer of Washington, Idaho, and Montana Railway Company, filed March 16, 1961,

(7) Petition of Southern Pacific Company for leave to intervene, filed at hearing held May 8, 1961,

(8) Transcript of proceedings held in San Francisco, California, May 8, 1961,

(9) Transcript of proceedings held in San Francisco, California, May 9, 1961,

(10) Transcript of proceedings held in San Francisco, California, May 10, 1961,

(11) Exhibits 1 to 35, both inclusive, filed at the hearings held May 8, May 9, and May 10, 1961 at San Francisco, California,

(12) Order of the Commission denying Petition for Reconsideration of Report and Order of Division 2, entered January 18, 1963,

(13) Petition of The Western Pacific Railroad Company, et al., seeking finding that issue of general transportation importance is involved, filed January 30, 1963,

(14) Order of the Commission designating this proceeding as one involving an issue of general transportation importance, entered February 14, 1963,

(15) Petition of United States for leave to intervene for the purpose of petitioning the Full Commission for reconsideration of the Report and Order of Division 2 and to be heard on Oral Argument, filed July 26, 1963,

[fol. 1006]

(16) Petition of United States to Full Commission for reconsideration of Report and Order of

Division 2, and request of United States for Oral Argument before Full Commission, filed July 26, 1963,

(17) Order of the Commission denying petitions of United States, entered August 9, 1963, served September 9, 1963,

(18) Petition of United States to Full Commission (1) to vacate its Order served July 30, 1963; (2) to reopen the proceeding for the purpose of considering petitions of the United States filed July 26, 1963 and such responses thereto as may be filed by the parties; (3) to hear Oral Argument if then warranted; and (4) to issue a decision stating findings and conclusions and the reasons or basis therefor upon all material issues as well as an Order granting or denying the relief sought, dated August 7, 1963,

(19) Carbon copy of letter dated September 10, 1963, at Washington, D.C. addressed Mr. John N. Dougherty, Attorney, Department of Justice, Washington 25, D.C., signed Harold D. McCoy, Secretary,

10. Opinion and Judgment of this Court filed June 22, 1964,

11. This Notice of Appeal.

III

The following question is presented by this Appeal:

The Western Pacific Railroad Company makes up the middle segment of a railroad through route (the Bieber [fol. 1007] route) which has been created, established, and maintained as a single unit extending between Portland, Oregon and Los Angeles, California for the purpose of providing railroad competition with the Southern Pacific route—the only other north-south railroad route serving

the Pacific Northwest and the State of California. Union Pacific Railroad and Northern Pacific Railway, although establishing and maintaining a system of through routes and rates via the Portland Gateway (the common point of interchange between such railroads and both Southern Pacific Company and the Bieber route) with Southern Pacific Company, has refused to establish a similar system with the Bieber route and has thus discriminated against Western Pacific on traffic moving through that interchange.

The question is whether Western Pacific is a "connecting line" within 49 U.S.C. §3(4), which prohibits discriminatory rates and practices between "connecting lines", even though Western Pacific does not have a direct physical connection with Union Pacific and Northern Pacific at the common Portland Gateway and even though Western Pacific has not, in the past because of the discrimination, been permitted to make up a through route through the common interchange point of Portland, Oregon.

E. L. Van Dellen, Walter G. Treanor, 526 Mission Street, San Francisco, California, 94105, Attorneys for Plaintiffs.

Of Counsel:

E. Barrett Prettyman, Jr., Hogan and Hartson, Attorneys at Law, Colorado Building, 1341 G. Street N.W., Washington, D.C., 20005.

[fol. 1008] Proof of Service (omitted in printing).

[fol. 1011] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. 41779—Civil

[Title omitted]

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE CERTIFIED TO THE SUPREME COURT OF THE UNITED STATES —Filed September 2, 1964

I

On August 17, 1964, Notice of Appeal to the Supreme Court of the United States was filed herein by The Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company, plaintiffs in the above-entitled case.

II

Intervener Southern Pacific Company desires that additional portions of the record be certified for submission to the Clerk of the Supreme Court of the United States. Intervener Southern Pacific hereby requests that the Clerk prepare, for submission to the Clerk of the Supreme Court of the United States, a transcript of the entire record be-[fol. 1012] fore the Interstate Commerce Commission heretofore submitted to the Court by plaintiffs and not designated in the Notice of Appeal filed August 17, 1964. In addition thereto, intervener Southern Pacific Company requests that the Clerk include in the transcript of the record for submission to the Clerk of the Supreme Court of the United States the following orders of this court:

1. Order granting motion of Union Pacific Railway Company to intervene as defendant, dated November 26, 1963;
2. Order allowing intervention of Northern Pacific Railway Company, Camas Prairie Railroad Company and Walla Walla Valley Railway Company, dated November 4, 1963;
3. Order allowing intervention of Southern Pacific Company, dated December 16, 1963;
4. Order allowing intervention of Interstate Commerce Commission as defendant, dated December 16, 1963; and
5. Order granting The Atchison, Topeka and Santa Fe Railway Company leave to intervene, dated January 13, 1964.

Charles W. Burkett, W. Harney Wilson, By Charles W. Burkett, Attorneys for Intervener-Defendant Southern Pacific Company.

[fol. 1013] Proof of Service (omitted in printing).

[fol. 1015] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1016]

SUPREME COURT OF THE UNITED STATES

No. 598, October Term, 1964

THE WESTERN PACIFIC RAILROAD COMPANY, et al., Appellants,

v.

UNITED STATES et al.

Appeal from the United States District Court for the Northern District of California.

ORDER NOTING PROBABLE JURISDICTION—January 18, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.